



Out of Many/One Union
AFGE NVAC/AFL-CIO

NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

NATIONAL GRIEVANCE

NG-8/10/17

Date: August 10, 2017

To: Kimberly McLeod
Acting Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420
kimberly.mcleod@va.gov
Sent via electronic mail only

From: Shalonda Miller, Staff Counsel, National Veterans Affairs Council (#53) (“NVAC”),
American Federation of Government Employees, AFL-CIO (“AFGE”)

RE: National Grievance against the Department of Veterans Affairs for violations concerning VACO review of locally-negotiated memoranda and agreements.

STATEMENT OF CHARGES

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) (“MCBA” or the “Agreement”), American Federation of Government Employees/National Veterans Affairs Council (the “Union”) is filing this National Grievance against you and all other associated officials and/or individuals acting as agents on behalf of the Agency for: 1) unilaterally implementing a policy that includes certain locally-negotiated memoranda and guidance in the definition of “Local Supplemental Agreements” (“LSAs”); 2) requiring the review and approval of local agreements by VA Central Office (“VACO”) prior to implementation; 3) refusing to provide duly authorized representatives during local negotiations who are prepared to negotiate over conditions of employment; and 4) failing to consult and negotiate with the Union in good faith.

Specifically, on July 27, 2017, NVAC learned that the Agency had published HR Letter 20-17-05, which included “official memoranda of understandings (MOUs), circulars, panel guides, and articles” in the definition of LSAs and required that they be reviewed and approved by VACO prior to implementation. In doing so, the Agency failed to provide duly authorized representatives for local negotiations to discuss and negotiate over changes in conditions of employment, and failed to negotiate in good faith. To date, the Agency has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.



Specifically, the Agency violated Articles 2, 46, and 47 of the MCBA, 5 USC § 7114(b)(2), 5 USC § 7116(a)(5) and (a)(7), and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On July 27, 2017, NVAC learned of a policy implemented by the Agency that directly contradicts the provisions and intent of the MCBA. HR Letter 20-17-05, dated June 5, 2017, notified leadership at the Veterans Benefit Administration that it was enacting new procedures for the review of LSAs. To that end, HR Letter 20-17-05 established a new definition of LSAs to include “official memoranda of understandings (MOUs), circulars, panel guides, and articles....” The Letter instructed that “effective immediately” any such documents be submitted for technical review and concurrence by VACO’s Office of Human Resources (*See* HR Letter 20-17-05, attached hereto as Exhibit A).

The MCBA only requires a local union to submit LSAs to VACO for approval (*See* MCBA Article 46, Section 2B). This HR Letter impermissibly requires that local memoranda also be submitted to VACO for approval. This policy removes authority from local management officials to enter into Local Union agreements. Removal of such authority violates Section 7114(b)(2) of the Federal Service Labor-Management Relations Statute (“Statute”) which requires that the Agency send a duly authorized representative prepared to discuss and negotiate on any condition of employment. Demonstrably, on July 25, 2017, Charles Moore, Assistant Director at the Cleveland Regional Office, refused to bargain a Local Union agreement over changes in working conditions due to the interpretation that he had no authority due to the HR Letter (*See* Email, attached hereto as Exhibit B).

There can be no dispute that such local agreements do not fall under the definition of LSAs. Notably, the *Manager’s Guide to DVA/AFGE Master Agreement* does not support the HR Letter’s definition. It provides the following Commentary for Article 46: “There is a difference between a Local Supplemental Agreement (LSA) and a local Memorandum of Understanding (MOU) or local Memorandum of Agreement (MOA) which are not part of the LSA. Local MOUs/MOAs are contracts in and of themselves, with their own terms and provisions for reopening. They are not automatically reopened by this article.”

The MCBA contains a supremacy clause in Article 2 which provides that conflicts between the parties’ Agreement and Agency policy shall be decided in favor of the MCBA. Here, by issuing the HR Letter, the Agency abrogated its Agreement with AFGE concerning MOUs and certain other locally-negotiated agreements, in contradiction of its own guidance. Further, by including local agreements in the definition of LSAs, the Agency ostensibly rendered Article 47, Section 4—the provision permitting Local Unions to engage in negotiations at the facility level—meaningless.

In addition to these contractual violations, the Agency also violated § 7114(b)(2) of the Statute by failing to be represented by negotiators who have full authority to enter into binding agreements. The Agency also committed unfair labor practices under § 7116(a)(5) and (a)(7) of the Statute, for failing to consult with the Union and negotiate in good faith, and for implementing a policy that contradicts the MCBA.

Violation

By failing to fulfill its obligations, the Agency violated, and continues to violate, the following:

- Article 2 of the MCBA: requiring the Agency to comply with federal law and regulations, and further establishing that any conflict between Agency policy and the MCBA be resolved in favor of the Agreement;
- Article 46 of the MCBA: which distinguishes between LSAs and other policy guidance, such as MOUs and MOAs;
- Article 47 of the MCBA: requiring the Agency to engage in substantive bargaining at the local level;
- 5 USC § 7114(b)(2): requiring the Agency to be represented at negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;
- 5 USC § 7116(a)(5) and (a)(7): requiring the Agency to consult with the Union and negotiate in good faith, and prohibiting the Agency from enforcing a policy in conflict with any applicable collective bargaining agreement; and
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedy Requested

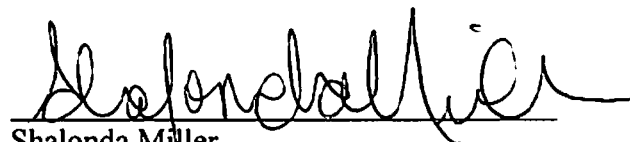
The Union asks that, to remedy the above situation, the Agency agree to the following:

- To return to the *status quo ante*;
- To immediately rescind HR Letter 20-17-05;
- To fully comply with its contractual and statutory obligations under Articles 2, 46, and 47 of the MCBA, and Sections 7114 and 7116 of the Statute; and
- To agree to any and all other remedies appropriate in this matter.

Time Frame and Contact

This is a National Grievance, and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions regarding this National Grievance, please contact AFGE's Office of the General Counsel.

Submitted by,

A handwritten signature in black ink, appearing to read "Shalonda Miller", written over a horizontal line.

Shalonda Miller
Staff Counsel, National VA Council
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
Tel: 202-639-6424
Fax: 202-379-2928
shalonda.miller@afge.org

cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC

EXHIBIT A



DEPARTMENT OF VETERANS AFFAIRS
Veterans Benefits Administration
Office of Human Resources
Washington, D.C. 20420

June 05, 2017

HR Letter 20-17-05

Director (00)

ATTN: All Services, Staff Offices, Regional Offices, and Centers

SUBJ: Review of Local Supplement Agreements - Q4 FY17

1. The Office of Human Resources (OHR) is conducting a review of Local Supplement Agreements (LSAs) negotiated between the Veterans Benefits Administration (VBA) and American Federation of Government Employees (AFGE), National Federation of Federal Employees (NFFE) and Service Employees International Union (SEIU) labor partners. The intent of the review will affirm cooperation and compliance to negotiated terms.
2. To support this initiative, District, Regional and Central Office Directors are to upload LSAs under their jurisdiction to include: official memoranda of understandings (MOUs), circulars, panel guides, and articles. This initial LSA review focuses on:
 - a. Awards and Recognition;
 - b. Performance Management/Discipline;
 - c. Telework, and;
 - d. Time Attendance/Leave

Management is to upload respective LSAs to the OHR Repository site, no later than July 28, 2017.

3. Effective immediately, all LSAs require a technical review prior to implementation. Management will forward LSA packets to VBACO, OHR. Prior to OHR review, LSA packets must obtain concurrence by respective District and Regional Office Directors for the field or Staff/Business Line Director for central office. OHR will review LSAs to ensure compliance to applicable VA/VBA regulations, and policies within 30 calendar days of receipt.
4. Questions related to this guidance may be directed to the Office of Human Resources at OHRPOLICY.VBAVACO@va.gov

/s/
Kirk A. Carter, Jr.

EXHIBIT B

----- Original Message -----

Subject: RE: Local Bargaining

Date: Tue, 25 Jul 2017 15:39:26 -0400

From: "Moore, Charles, VBACLEV" <Charles.Moore5@va.gov>

To: "Bluy, Jason, VBACLEV" <Jason.Bluy@va.gov>

Cc: "J.swartz@afgelocal2823.com" <J.swartz@afgelocal2823.com>

Jason,

Yes, that's accurate.

Pursuant to HR Letter 20-17-05, effective June 5, 2017, all Local Supplement Agreements, including MOUs, Circulars, Panel Guides, and Articles must be forwarded to Central Office for technical review prior to implementation.

Charles

Charles L. Moore

Assistant Director

Cleveland Regional Office

"In God We Trust: All Others Bring Data." William Edwards Deming

From: Bluy, Jason, VBACLEV

Sent: Tuesday, July 25, 2017 2:48 PM

To: Moore, Charles, VBACLEV

Cc: J.swartz@afgelocal2823.com

Subject: Local Bargaining

Mr. Moore,

I just met with Jennifer with respect to their new phones system "Cisco", that's slated to be rolled out on the 14th of August.

It appears that Jennifer as well as all other managers here in Cleveland are no longer able to bargain Memoranda of Understanding's locally, and that they must be sent out to Human Resources of Central Office for their concurrence?

Is this your understanding as well?

Thank you for your time.

Jason Bluy

Vice President, AFGE Local 2823

Veterans Benefits Administration

Cleveland Regional Office

216-522-3530 x3594

jason.bluy@va.gov

Find that peace within yourself, that peace and quiet and confidence that you can pass on to others, so that they know that you are honest and you are fair and will help them, no matter what, when the chips are down.

Maj. Winters E. co 506th