



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-1/30/19

Date: January 30, 2019

To: Tracy Schulberg
Executive Director
Office of Labor-Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420
Tracy.Schulberg@va.gov
Sent via electronic mail only

From: Michael A. Gillman, 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 related to its retroactive implementation of new performance standards for Pension Management Center Veterans Service Representatives**

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) (“Master Agreement”), the 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 Department of Veterans Affairs for its retroactive implementation of new performance standards for Pension Management Center Veterans Service Representatives.

Specifically, the Agency’s actions have violated Articles 2, 27, 47, and 49 of the Master Agreement and 5 C.F.R. Part 430. These actions also constitute an unfair labor practice under 5 U.S.C. §7116 (a)(1) and (5), in addition to any other laws, rules, regulations, and contractual provisions not herein specified.



STATEMENT OF THE CASE

Background

On December 31, 2018, Agency management in the Pension Management Center (PMC) announced that starting on January 1, 2019 new output targets would be implemented for Veterans Service Representatives working at the PMC. This change affects VSRs working at the Philadelphia Regional Office, the Milwaukee Regional Office, and the St. Paul Regional Office. The December 31, 2018 notice also stated that the change to the performance standards would apply *retroactively* to the beginning of FY2019 (October 1, 2018). VSRs who failed to meet the newly implemented, but retroactively applied, performance standards would have their telework schedules changed. A copy of the notice of implementation has been included as Exhibit 1 to this grievance. Upon information and belief, the Agency has issued letters of counseling to employees who failed to meet their standards as a result of the retroactive application of the standards and that such individuals have been or are being removed from previously agreed upon telework arrangements.

Violation

The Agency's use of retroactive performance standards in these circumstances violates the Master Agreement, government-wide regulations, and federal law as follows.

Article 27, Section 5(C) of the of the Master Agreement requires that "performance standards and elements to the maximum extent feasible shall be reasonable, realistic, attainable, and sufficient under the circumstances to permit accurate measurement of an employee's performance, and adequate to inform the employee of what is necessary to achieve a 'fully successful level of achievement.'" Applying performance standards retroactively is patently unreasonable. Furthermore, the standards at issue are substantially incomprehensible to VSRs who are unable to determine what work will be counted toward their performance metrics and what work will not be counted. The requirement that performance standards gives employees notice of what it will take to achieve fully successful performance presupposes that the notice be provided to employees before they are held accountable to a particular standard. Retroactive application of performance standards violates the terms of Article 27, Section 5(C), (F), and (H). The retroactive application of these standards further violates analogous provisions of the parties' November 7, 2018 MOU on PMC VSR Performance Standards.

The retroactive application of performance standards also violates OPM regulations regarding performance plans. For example, 5 C.F.R. §430.206(b)(2) requires that "performance plans shall be provided to employees at the beginning of each appraisal period." Here the Agency made changes to the PMC VSR performance plans and applied said changes *retroactively*. The Agency then made changes to employee working conditions based on its appraisal of performance during the first quarter of FY2019.

Additionally, the new January 1, 2019 standards were announced and implemented without providing notice and an opportunity to bargain with the Union. The Master Agreement requires that changes to working conditions, and specifically, changes to performance standards be made only after notice and an opportunity to bargain. Article 49, Section 4 requires the Agency to “provide reasonable advance notice to the appropriate Union officials prior to changing conditions of employment of bargaining unit employees.” The process for notice and bargaining that occurs during the life of the Master Agreement is spelled out in Article 47. Article 27, Section 5(E) of the Master Agreement specifically that *prior to implementation of changes to performance standards*, the Agency shall meet all bargaining obligations. Implementing changes to conditions of employment without first bargaining with the union is an unfair labor practice under 5 U.S.C. §7116(a)(1) and (5). Here the Agency failed to properly notify and bargain with the Union and instead announced the retroactive application of VSR performance standards as a *fait accompli*. The Agency has immediately begun implementation of these changes by issuing letters of concern and by making changes to telework arrangements.

Remedy

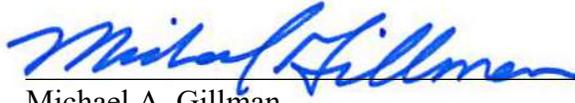
In light of the violations described above, the Union asks that the Agency agrees to the following:

- To return to the status quo ante, including reinstatement of telework arrangements that were amended or rescinded as a result of the retroactive application of the performance standards;
- To cease and desist from further violations of the Master Agreement, government-wide regulations, and federal law;
- To rescind the December 31, 2018 notice and any performance counseling or letters issued as a result of the retroactive application of performance standards;
- To post a notice to all affected employees recognizing the violations and reaffirming the Agency’s legal obligations;
- To make whole any employee affected by the Agency’s violation, including, but not limited to back pay, restoration of leave, and attorney’s fees; 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. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance. If you have any questions regarding this grievance, please contact the undersigned at 202-639-6424.

Submitted by,



Michael A. Gillman

Staff Counsel, National VA Council

American Federation of Government Employees, AFL-CIO

80 F Street NW

Washington, D.C. 20001

Tel: 202-639-6424

Michael.gillman@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