



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-2/28/19

Date: February 28, 2019

To: Tracy Schulberg
Executive Director
Office of Labor-Management Relations
Department of Veterans Affairs
810 Vermont Ave. 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 policy of payment of reduced per diem amounts issued in violation of the Master Agreement and Arbitrator Stephen Crable's Award

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 violation of the Master Agreement and Arbitrator's Award which require payment of the maximum GSA Meals and Incidental Expenses (M&IE) per diem rates for VBA employees traveling for extended periods of time for training purposes.

Specifically, the Agency's actions have violated Articles 2, 37, and 44 of the Master Agreement and Arbitrator Crable's award (Attached to this grievance as Exhibit 1). These actions also constitute an unfair labor practice under 5 U.S.C. §7116(a)(1) and (5). The refusal to pay the full per diem in these circumstances further violates 5 C.F.R. §301-11.200, §2(g) of Pub. L. No. 105-264, and all relevant articles, laws, regulations, and past practices not herein specified.



STATEMENT OF THE CASE

Background

On November 26, 2018, Arbitrator Stephen Crable issued an award in a dispute between the parties regarding the Agency's reduction in M&IE per diem amounts paid to VBA employees who attend "Challenge Trainings." The Union's underlying grievance alleged that the practice of paying these reduced per diem amounts violated Article 37, Section 3 of the Master Agreement. The Arbitrator found that the Agency "violated the Master Agreement and federal law when it reduced the per diem rates per policy for bargaining unit employees traveling to Challenge Training" and ordered that the Agency "immediately begin[] paying the full applicable GSA per diem rates to employees attending Challenge Training, and, to immediately cease and desist from further violations of Article 38 and Section 3 of the Agreement and federal law." *See* Arbitrator's Award (Exhibit 1), p. 16.

The Arbitrator also ordered the Agency to restore the status quo ante. The Agency filed exceptions with the FLRA over this aspect in the Award on the understanding that such a remedy necessarily includes reimbursement payments for those who were victims of the unjust and illegal reduction in per diem. This was the only basis of the Agency's exceptions. At the time of this grievance these exceptions are still pending resolution before the FLRA.

Despite the Arbitrator's award, and the Agency's acquiescence to the Arbitrator's decision on the merits, the Agency has issued another policy that purports to allow the Agency to reduce per diem amounts for employees traveling for Challenge Training. On February 7, 2019, Paul Lawrence, Under Secretary for Benefits, issued a "Policy on Reduced Per Diem for Training and Details." (Attached to this grievance as Exhibit 2). This policy contains the exact same provision that was found to have violated the Master Agreement in the case before Arbitrator Crable. By letter dated February 8, 2019, the Union's VBA Mid-Term Bargaining Committee informed the Agency that the new policy *still* violates the Master Agreement. (Attached to this grievance as Exhibit 3). The Union explained to the Agency that its only recourse, if it desired to reduce the per diem rates, would be to submit proposals and bargain with the union in *term bargaining*. The provisions of the current contract remain in full force and effect until they are replaced by new provisions in a successor collective bargaining agreement. The Union explained that the Agency may not use the mid-term bargaining process to undo what is already covered-by and provided for in the Master Agreement.

To date the Agency has not complied with Arbitrator Crable's award. Instead, it has unilaterally imposed the same policy that violated the contract in the first instance. The Agency's imposition of this policy violates Article 37, Section 3 of the Master Agreement (which requires payment of the full per diem amount) and constitutes a unilateral change in conditions of employment and a repudiation of Article 37, Section 3.

While the Agency cannot lawfully reduce the per diem in these circumstances, even if the contract would allow it, the Federal Travel Regulation would not. As explained by Arbitrator Crable, the method used by the Agency to reduce the per diem amounts runs afoul of federal regulations: "Even assuming *arguendo* that the Department had prevailed on its argument that

federal law required the Department to change its practice of using full GSA per diem rates, its methodology for reducing per diem expenses does not appear to comply with the law and regulations on which it relies.” See 5 C.F.R. §301-11.200. The Agency’s refusal to pay the full per diem further violates the Travel and Transportation Act of 1998, which provides that the “head of an agency shall ensure that the agency reimburses an employee who submits a proper voucher for allowable travel expenses in accordance with applicable travel regulations within 30 days after submission of the voucher.” See Pub. L. No. 105-264, §2(g), codified at 5 U.S.C. §5701 Note.

By this grievance, the Union makes explicit that it does not acquiesce to the lower per diem amount (which violates the Master Agreement) or otherwise waive any rights guaranteed in the Master Agreement.

Violation

By implementing this policy the Agency has violated and continues to violate the following:

- Article 37, Section 3 of the Master Agreement which requires the Agency to pay *all* travel expenses in connection with required training;
- Article 44, Section 2 of the Master Agreement which provides that “The arbitrator’s decision shall be final and binding.”
- Article 2 of the Master Agreement which requires the Agency to comply with federal law and regulations;
- 5 U.S.C. §7116(a)(1) and (5); requiring the Agency to bargain in good faith;
- Pub. L. No. 105-264, §2(g), requiring the Agency to ensure payment of travel expenses;
- 5 C.F.R. §301-11.200, setting forth the circumstances under which per diem may be reduced;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedy Requested

To remedy the above described violations, the Union asks that the Agency agree to the following:

- Cease and desist from paying reduced per diem amounts;
- Return to the status quo ante;
- Fully comply with its contractual obligations under the Master Agreement and federal law;
- Make-whole any bargaining unit employees adversely affected by the reduced per diem policy;
- Distribute and post a notice to all bargaining unit employees identifying the Agency’s violations and reaffirming its obligations under the MCBA and federal law; and
- Any and all other remedies appropriate in this matter.

Time Frame and Contact

This is a National Grievance. The time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions, please contact the undersigned at the AFGE Office of the General Counsel. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.



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