



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-5/22/19

Date: May 22, 2019

To: Kevin Nelson
Labor & Employment Relations Specialist
Office of Human Capital Management
Veterans Benefits Administration
Department of Veterans Affairs
Kevin.nelson2@va.gov
Sent via email 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 Department of Veterans Affairs for violating the Master Agreement and federal law in its implementation of changes to voluntary overtime procedures for VSRs

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”), 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 announcing and implementing changes to voluntary overtime for Veterans Service Representatives (VSRs). 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, 21, 47, and 49 of the Master Agreement and 5 U.S.C. §7116(a).

STATEMENT OF THE CASE

Background

On April 24, 2019, the VBA Office of Field Operations sent out a directive to all Regional Office directors regarding voluntary overtime for VSRs. A copy of this directive has been attached to this grievance as Exhibit 1. The directive stated that VSRs who were exceeding their performance standards (in both output and quality) would be permitted to work unlimited overtime

“to promulgate and authorize rating related EP’s only and final ratings claims for IDES.” The directive authorizes the Regional Office directors to determine which “high performers” would be eligible for the unlimited overtime. By its terms, the directive took immediate effect and would remain in effective until April 30, 2019.

Article 21, Section 4(K) of the Master Agreement provides that voluntary overtime is to be governed by a roster of employees developed at the local level according to seniority.¹ The Agency’s directive violates this provision by mandating that certain overtime opportunities be reserved for those deemed “high performers” in sole discretion of the management. The directive ignores the requirement that voluntary overtime be determined at the local level through bargaining and according to seniority.

The directive itself violates the Master Agreement and thus cannot be lawfully implemented. The directive was announced directly to the Regional Office directors. The Agency did not notify the Union’s VBA mid-term bargaining team and did not engage in any bargaining over the directive prior to its issuance and effective date. Any proposed change in overtime policies and procedures must first be given to the appropriate level of union recognition. For a national change like this, advance notification must be given to the Union’s VBA Mid-term bargaining committee. *See* Master Agreement, Article 49, Section 4 (“The Department shall provide reasonable advance notice to the appropriate Union official(s) prior to changing conditions of employment of bargaining unit employees.”), Article 47 (providing the process for mid-term bargaining). By unilaterally implementing these changes to overtime procedures, the Agency has refused to bargain in good faith in violation of 5 U.S.C. §7116(a)(1) and (5). Accordingly, the Agency has violated Article 2 of the Master Agreement which requires the Agency to comply with applicable federal statutes.

Violation

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

- Article 2 of the Master Agreement: requiring the Agency to comply with federal law and regulations;
- Article 21 of the Master Agreement: requiring that voluntary overtime opportunities be extended pursuant to an eligibility roster bargained at the local level according to seniority;
- Article 47 and 49 of the Master Agreement: requiring the Agency to comply with agreed-upon procedures for mid-term bargaining at the national level;
- 5 U.S.C. §7116(a)(1) and (a)(5): requiring the Agency to consult and negotiate in good faith with the Union;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

¹ *See* Master Agreement, Article 21, Section 4(K) (“Rosters of employees will be utilized to determine voluntary or involuntary overtime. The mechanics and eligibility of the rosters are subjects for local negotiations and seniority will be the criterion. The Department will make available to the Union, upon request, current records of overtime assignments.”)

Remedy requested

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

- To cease and desist implementation of the overtime changes identified in the directive;
- To return to the *status quo ante*;
- To fully comply with its contractual obligations under Articles 2, 21, 47, and 49 of the Master Agreement and its statutory obligations under 5 U.S.C. §7116(a);
- To distribute an electronic notice posting to all bargaining unit employees concerning the Agency's failure to satisfy bargaining obligations with the Union;
- To make-whole any bargaining unit employee adversely affected by the Agency's improper directive, including but not necessarily limited to backpay (including attorneys' fees) for bargaining unit employees improperly denied overtime opportunities as a result of this directive;
- 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, please contact the undersigned at 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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cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC
Tracy Schulberg, Acting Executive Director, VA-LMR