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AFGE NVAC/AFL-CIO

NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-9/20/19

Date: September 20, 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: 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 regarding its violation of the Master Agreement with regard to official time for National 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” or “NVAC”) 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 failure to adhere to the terms and provisions of the Master Agreement with regard to the granting of official time to National Representatives.

Specifically, the Department’s actions have violated Articles 2, 4, 5, 17 and 48 of the Master Agreement; and constitute an unfair labor practice pursuant to 5 U.S.C. § 7116 (a)(1).

STATEMENT OF THE CASE

Background

Tinita Cole is a duly appointed National Representative of the NVAC. Ms. Cole is stationed at the Dayton VA Medical Center (“VAMC”) and conducts her national duties on 50% official time. One such duty requires her to attend semiannual Labor Management Committee meetings. The latest



meeting, referred to as “LMR,” was held in Washington D.C., from September 9 - 13. Over the past several months, leading up to and upon her return from LMR, local management has engaged in a pattern and practice of harassment, union animus, and unlawful retaliation as it pertains to Ms. Cole’s official time.

First, on August 28, 2019, Kimberly Frisco, Chief of Community and Public Relations at the Dayton VAMC, ordered Ms. Cole to submit an agenda for the upcoming LMR to the Human Resources Department. Additionally, Ms. Frisco stated the agenda needed to be shared with the service chief, as well as the section chief. Pursuant to the parties’ past practice, Ms. Cole planned to submit the agenda to her direct supervisor upon her return from LMR. Ms. Cole explained this past practice to Ms. Frisco.

Then, on August 29th, Anita Carmichael, an Assistant Human Resources Officer at the Dayton VAMC, again demanded that the LMR agenda be submitted in advance, for the purported purpose of “verif[y]ing what constitutes official time for timecard purposes.” Ms. Carmichael sent a follow-up email to Ms. Cole on September 3rd, again demanding that the agenda be submitted in advance.

That same day, Ms. Frisco emailed Ms. Cole and stated: “Since you are out on official time next week, are you able to work a full-week (8 hours/day) for the rest of [this] week? Do [sic] to staffing and the high volume of Veterans, we could definitely use your assistance. Please advise.” This was ostensibly an effort by management to have Ms. Cole makeup duty time due to her attendance at LMR. Ms. Cole had never before been asked to alter her schedule in such a manner.

On September 17th, Ms. Carmichael emailed Ms. Cole notifying her that HR still had not received the LMR agenda. As a consequence, she then directed Ms. Cole to enter annual leave for her attendance at LMR so that her timecard could be corrected. Further, she told Ms. Cole that “you have exhausted your official time of 1040 hours. Therefore, any further usage of official time is hereby disapproved until FY20 [beginning on] October 1, 2019.” Unbeknownst to Ms. Carmichael, Ms. Cole had submitted the LMR agenda to her first-level supervisor, the appropriate management official, earlier that day.

And finally, on September 18, 2019, Ms. Frisco denied Ms. Cole’s request for authorized absence to attend Union-sponsored training, stating: “After review of the work schedule and workload associated with the roll out of PATS, I am unable to approve your request....”

Violations

Ms. Carmichael and Ms. Frisco’s orders are blatant violations of the MCBA and demonstrate escalating union animus. Article 48, Section 2 of the MCBA prescribes that National Representatives are on 50% official time. This time is assigned to the representative by designation of the NVAC and does not constitute a bank of hours. To the extent that local managers believe that they can establish that official time may be exhausted, this belief would necessarily be limited to locally negotiated official time pursuant to Section 10 of the Article. The MCBA does not vest local management the authority to dictate official time granted at the

national level. Further, official time is based on the leave year, not the fiscal year as improperly stated by Ms. Carmichael. The facility's implementation of such changes also constitutes an illegal failure to bargain.

Article 48, Section 3 of the MCBA provides that national union representatives may receive their official time in advance and may accumulate such time to use as needed. There is no agreement between the parties that national official time be accounted for on a week-to-week basis. The MCBA does not permit the Agency to impose restrictions on the hours or days that can be used for official time. Although a National Representative must account for her official time, she is not required to work specified days or hours each week. Thus, working in a 100% union capacity for one week does not require that any outstanding duty time be made up immediately before or after the use of said official time. Such a requirement unlawfully repudiates the granting of official time specifically negotiated by the parties.

Further, Article 5 of the MCBA requires that National Representatives attend LMR on official time. Thus, Ms. Carmichael lacks the authority to require that Ms. Cole retroactively request annual leave, particularly if for punitive reasons. Moreover, the agenda for LMR is coordinated between the President of the NVAC and VA Central Office. The provision of the agenda is solely for the arrangement of appropriate representation; it is not a prerequisite for the granting of official time. Only the names of the designated representatives are required for the securing of official time, as well as travel and per diem.

With regard to the Department's denial of Ms. Cole's request for administrative leave in order to attend training, Article 4, Section 1 of the MCBA encourages employee participation in Union-sponsored labor-relations training and deems such training a benefit to both Union personnel and management. The timing of the denial demonstrates that it was in retaliation for Ms. Cole's use of official time.

Article 17 of the MCBA encourages mutual respect. It explicitly prohibits management from harassing bargaining unit employees and further protects employees from retaliation or reprisal for exercising their statutory rights. Additionally, by attempting to place illusory restrictions on Ms. Cole's use of official time, the Department has interfered with her representational rights. This constitutes an unfair labor practice pursuant to 5 U.S.C. §7116(a)(1).

Lastly, Article 2 of the MCBA requires that the Agency comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Therefore, in violating §7116(a)(1), as set forth above, the Agency also failed to comply with Article 2.

Remedy Requested

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

- To cease and desist from attempting to restrict the use of official time by National Representatives;

- To fully comply with its contractual obligations under Articles 2, 4, 5, 17 and 48 of the MCBA and its statutory obligations under 5 U.S.C. § 7116;
- To rescind the orders given by Ms. Carmichael, Ms. Frisco, or any other management official concerning the approval or denial of Ms. Cole's official time;
- To make Ms. Cole whole for any denials of official time based on the improper orders, including, but not limited to, restoration of leave, straight pay for representation functions performed outside her tour, and attorney's fees;
- To distribute an electronic notice posting to all bargaining unit employees concerning the Agency's statutory violations; and,
- To agree to any and all other remedies appropriate in this matter.

Timeframe 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 grievance, please contact the undersigned at AFGE's 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.

Submitted by,



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