



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE NG-01/10/2020

Date: January 10, 2020

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

From: Christopher Zatrutz, 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 failing to bargain in good faith during negotiations for a successor Master Collective Bargaining Agreement.

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 Department for failing to bargain in good faith during negotiations for a successor Master Collective Bargaining Agreement. To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the VA violated Articles 2 and 49 of the MCBA, and 5 U.S.C. §§7116(a) and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On December 15, 2017, the then-Deputy Secretary for the Department of Veterans Affairs, Thomas G. Bowman, issued a letter to NVAC President, Alma L. Lee, officially notifying the Union of the Agency’s intention to renegotiate the Master Agreement. On April 2, 2019, the Parties



executed ground rules, which governed the process by which the parties would negotiate the successor Master Agreement. In the ground rules, the Parties agreed to nine two-week sessions to complete bargaining, with the specific caveat that the Parties would engage each other in good faith. However, the Union has filed five National Grievances concerning the Department's conduct throughout the scheduled bargaining sessions.

On December 5, 2019, during the 9th scheduled bargaining session, the Department refused to meet with the Union face-to-face and insisted on submission of proposals via email.¹

December 11-12, 2019

On December 11, 2019, the Department continued to refuse to meet with the Union as required by the ground rules. Additionally, the Department continued to refuse to present and explain its proposals as required by the ground rules. Instead, the Department waited until 4:55pm (bargaining sessions end at 5pm) on the last scheduled day of bargaining to email its outstanding counters and Last, Best and Final Offers (LBFOs) on 23 articles. (Attachment A.)

December 16, 2019

On December 16, 2019, Michael Picerno, representative of the Department, sent an email to the Union's Chief Negotiator, Alma L. Lee, inviting the Union's proposals by email. (Attachment B.) Mr. Picerno also asserted that the final date for negotiations was December 17, 2019, despite the Department's refusal to meet for six days each during Sessions 8 and 9. On December 17, 2019, Ms. Lee responded to Mr. Picerno pointing out that the parties had not met for the duration of bargaining required by the ground rules and invited the Department back to the table. (Attachment C.)

Impasse

On December 17, 2019, the FMCS mediator released the Parties. (Attachment D.) On December 19, 2019, the Department unilaterally requested that the Federal Service Impasses Panel consider a negotiation impasse. (Attachment E.) The filing contained a number of inaccuracies:

1. The Department asserted that it sought FMCS assistance because AFGE was uninterested in making common sense changes to the current CBA. However, the Department sought FMCS assistance because it no longer desired the procedures the Parties agreed to in the ground rules. (Attachment F.)
2. The Department asserted that 42 Articles and the Duration of Agreement were at impasse. However, the Parties never discussed 17 of those Articles or the Duration of Agreement. Further, the Department included Article 67 as an issue for impasse; however, the Department never included Article 67 in its initial proposals. Therefore, the Parties' ground rules prohibit the Department from reopening that Article.

¹ This violation is the subject of a separate national grievance (NG 12/11/19) but is listed here as context for the instant grievance.

3. The Department asserted that it provided Last Best and Final Offers on 42 Articles and the Duration of Agreement. However, the Department only submitted LBFO on 23 of these Articles.
4. The Department listed the parties' agreement as expiring on March 15, 2014. However, the parties' agreement is in an indefinite rollover triggered by the Department's notice to reopen the agreement. Per the Duration of the Agreement of the MCBA, "If renegotiation of an Agreement is in progress but not completed upon the terminal date of this Agreement, this Agreement will be automatically extended until a new agreement is negotiated." The year-to-year rollover ended on March 15, 2018 and the Parties' entered into a rollover that ends upon completion of a new agreement.
5. The Department listed that the parties were in mediation for 8 days² totaling over 60 hours. However, the Parties have been in mediation since the 3rd bargaining session and remained in mediation for the duration of bargaining. As a result, the Parties were in mediation for 44 days totaling 352 hours.

Further, the VA has explicitly insisted to impasse on permissive matters, including, but not limited to:

1. The Union's waiver of its statutory right to bargain during the term of the agreement. (Ex. Agency Art. 47)
2. The Union's waiver of its statutory right to bargain terms and conditions of employment that will supersede Agency policy. (Ex. Agency Art. 22 and 18)
3. The Union's waiver of its statutory right to bargain the substance of the grievance and arbitration procedure. (Ex. Agency Art. 43 and 44)
4. The Union's waiver of its statutory right to bargain the procedures and appropriate arrangements of terminating Memoranda of Understanding, Memoranda of Agreement and past practices concerning matters not covered in the Master Agreement. (Ex. Agency Art. 46)
5. The Union's waiver of its statutory right to not subject its exclusive recognition to challenge due to the collective bargaining agreement's being in effect for a term exceeding three years. (Ex. Agency Duration of Agreement)
6. The Union's waiver of its statutory right not to agree to a zipper clause. (Ex. Agency Art. 2)³

Violations

The Department's insistence on bargaining through the exchange of proposals via email, not only violates the Parties' ground rules, but also the law. The VA's insistence to impasse on waivers of the Union's statutory rights also violates the law. The Department's filing with FSIP is premature as the parties have not discussed 17 of the articles for an impasse to be found. Further, the FSIP request left the Union without any notice of why the proposals are at impasse. The Department's FSIP request does little to shed light on the matter. Notably, the Department does

² The Union assumes that the Department defined "sessions" as bargaining days throughout its FSIP request. The Union's use of "session" throughout this grievance refers to a single two-week scheduled meeting under the ground rules.

³ Examples are attached as Attachment G.

not claim to be at impasse on four articles: the two new articles each side proposed to add to the Agreement (Phased Retirement and Staffing from the Union; Conditions of Employment and Department Space and Facilities from the Department). The Department's rush to dump its proposals on over half of the Articles for the Master Agreement on the Union during the last five minutes of a bargaining session without any explanation of its interests or why the changes were proposed demonstrates that the VA did not come to the table with any willingness to enter the discussions with an open mind or a purpose of reaching agreement. Instead the VA was merely going through the motions of negotiations with a clear strategy to evade bargaining. As a result, the Department violated, and continues to violate, the following:

1. By violating the federal statutes outlined below, the VA violates Article 2 of the MCBA, which requires that the Department be governed by applicable federal statutes;
2. By violating the federal statutes outlined below, the VA violates Article 49 of the MCBA, which requires that the parties have due regard for the obligations imposed by 5 U.S.C. Chapter 71;
3. By failing to meet for twelve days during the scheduled bargaining sessions 8 and 9, the Department has violated the Parties' Ground Rules;
4. By failing to present and explain its proposals, the Department has violated the Parties' Ground Rules;
5. By failing to bargain in good faith, the VA violates 5 U.S.C. §§7116(a)(1) and (a)(5), which requires the Department to consult and negotiate in good faith with the Union;
6. By engaging in surface bargaining, evading bargaining, and insisting to impasse on permissive subjects, the Department has violated 5 U.S.C. §§7116(a)(1) and (a)(5); and,
7. Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedies Requested

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

1. To return to the *status quo ante* and engage in good faith negotiations;
2. To cease and desist further violations of the Agreement and law;
3. To post a notice in all VA locations where bargaining unit employees are present that the VA has violated the Master Agreement and law and that the VA will refrain from further violations of the Master Agreement and law;
4. To make whole the Union and any employee affected by the Department's violations;
5. To pay reasonable attorney's fees and litigation costs under 5 U.S.C. §5596; and,
6. 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 is the designated representative for this grievance. If you have any questions regarding this National Grievance, please contact the undersigned at AFGE Office of the General Counsel.



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