



# NATIONAL VETERANS AFFAIRS COUNCIL

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

Out of Many/One Union  
AFGE NVAC/AFL-CIO

## NATIONAL GRIEVANCE

NG-2/7/20

**Date:** February 7, 2020

**To:** Tracy Schulberg  
Executive Director  
Office of Labor-Management Relations  
U.S. Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 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 for failing to notify and bargain over a change in conditions of employment for certain nurses in the Office of Community Care**

### 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 of Veterans Affairs, Veterans Health Administration (the “Department” or “VHA”) for failing to notify and bargain with the Union over a change in conditions of employment when it required certain nurses in the Office of Community Care (“OCC”) to provide consults for medical services without a VHA physician’s oversight or concurrence. To date, the Department has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the Department violated Articles 2, 3, 47, and 49 of the MCBA, 5 U.S.C. § 7116(a), and any and all other relevant articles, laws, regulations, and past practices not herein specified. The Union specifically reserves the right to supplement this grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.



## STATEMENT OF THE CASE

### Background

The OCC provides support to veterans who obtain medical care and services through non-VA providers in the community and surrounding areas. Non-VA care claims must meet administrative and clinical criteria for eligibility under the appropriate legal authority in order to be approved for payment by the Department. OCC's Payment Operations and Management ("POM") division processes the vast majority of veterans appeals of non-VA care claims.

On January 9, 2020, the NVAC was notified that POM management in the Canandaigua, New York Harbor, and West Palm Beach Medical Centers had unilaterally changed the conditions of employment for POM nurses without providing the Union notice and an opportunity to bargain. POM nurses perform clinical reviews to determine if the veteran's claim meets the established eligibility criteria. The Department is now requiring these nurses, under the threat of discipline for non-compliance, to issue "consults"—requests for clinical services—without first securing a delegation of authority from a provider or other clinician. These duties exceed the scope of practice for these nurses. Additionally, in accordance with the OCC Guidebook, community care staff are only authorized to release direct scheduling and *administrative* consults—without a signature by the clinical provider—for five limited types of consult services: Optometry, Audiology, Nutrition, Podiatry and Primary Care. POM consults are clinical not administrative; furthermore, they concern emergency medical services, not those enumerated above. Thus, the new consult process constituted a change in conditions of employment and necessitated consultation with the Union.

Notably, a November 2019 report<sup>1</sup> by the VA Office of Inspector General ("OIG") found significant deficiencies with POM's management of non-VA care claims appeals. The OIG recommended that VHA develop better controls and oversight with regard to the appeals process. By expanding the scope of practice for POM nurses without developing a specific policy regarding this task, and by making these nurses solely responsible for the potential expenditure of millions of dollars in payments of non-VA medical services without proper oversight, the Department seemingly controverts the objectives sought by the OIG.

### Violations

By refusing to notify, consult, and negotiate in good faith with the Union prior to implementing the new consult process, the Department committed an unfair labor practice under 5 U.S.C. § 7116(a)(1) and (a)(5). Additionally, Article 2 of the MCBA requires that the Department comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Therefore, in violating 5 U.S.C. § 7116, as set forth above, the Department also failed to comply with Article 2. Further, Article 3 encourages the parties to maintain a cooperative labor-management relationship that is based on mutual respect, open

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<sup>1</sup> VA Office of Inspector General, *VHA Did Not Effectively Manage Appeals of Non-VA Care Claims*, 18-06294-213, November 21, 2019, available at <https://www.va.gov/oig/pubs/VAOIG-18-06294-213.pdf>.

communication, consideration of each other's views, and minimizing collective bargaining disputes. By failing to notify, consult, and negotiate with the Union prior to implementing the new consult process, the Department renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes. Finally, the Department violated Article 47, Section 2, and Article 49, Section 4, which set forth the parties' responsibilities regarding mid-term bargaining at the national level.

### **Remedy Requested**

The Union asks that, to remedy the above situation, the Department agrees to the following:

- To cease and desist the further implementation of the consult process for POM nurses;
- To return to the *status quo* until bargaining obligations are met;
- To consult with the Union on the development of policies or processes that provide an appropriate level of oversight for POM nurses;
- To fully comply with its contractual obligations under Articles 2, 3, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a);
- To distribute an electronic notice posting to all bargaining unit employees concerning the Department's failure to properly notify the Union of the new consult process in violation of the MCBA and law;
- To make-whole any bargaining unit employee adversely effected by the improper implementation of the consult process change; 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. If you have any questions, please contact the undersigned at the AFGE Office of the General Counsel.

Submitted by,



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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