



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

NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-02/10/20

Date: February 10, 2020

To: Tracy Schulberg
Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
tracy.schulberg@va.gov
Sent via email only

From: Christopher Zatrutz, 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 by failing to withhold union dues.**

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”), 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 (“the Department”) for failing to withhold union dues. 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, 45, 47, and 49 of the MCBA; 5 U.S.C. §§ 7115 and 7116; and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On January 30, 2020, Roy Ferguson, the Director of Staff Operations at the Office of Labor-Management Relations, Department of Veterans Affairs, sent an email to Alma Lee, President of the American Federation of Government Employees/National Veterans Affairs Council, #53, regarding the Department’s failure to withhold dues from members’ pay checks for the first pay period of 2020. (Attachment A). According to the Department’s own admission, it failed to deduct dues from members’ pay checks at as many as twelve (12) AFGE/NVAC Locals.



(Attachment A).¹ The email further stated that the Department would unilaterally deduct double the dues amount in a future pay period to correct the Department's failure to withhold the dues. The Department's failure to withhold dues and its unilateral double deduction violates various provisions of the MCBA and 5 U.S.C. Chapter 71.

Violations

A. Dues Withholding

Article 45 of the MCBA (Dues Withholding) prescribes the negotiated procedures and the responsibilities of the Department and the Union for the withholding of union dues. The Department is required to withhold union dues and transmit the remittance to the Union. (Article 45, Section 3). Here, the Department informed the Union that "union dues deductions were not collected during the pay period ending January 18, 2020, pay period 1 (PP1)." (Attachment A).

The Department is permitted to discontinue dues withholding "only when the employee [1] leaves the unit of recognition, [2] ceases to be a member in good standing of AFGE, or [3] submits a timely revocation form under the procedures of [Article 45]. (Article 45, Section 1). Here, the Department does not claim that the entire membership at twelve (12) locals left their units of recognition, ceased to be members in good standing, or submitted SF-1188 forms to revoke dues withholding. Therefore, the Department's failure to withhold union dues from the paychecks of union members at twelve (12) locals violated the MCBA.

Federal sector labor law expressly requires so-called dues checkoff when authorized by the employee. 5 U.S.C. § 7115(a) requires the Department to withhold union dues from the paychecks of members of the Union.² In pertinent part, the statute provides:

"If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee."

5 U.S.C. § 7115(a). *See AFGE, Council 214, AFL-CIO v. FLRA*, 835 F.2d 1458, 1460 (D.C. Cir. 1987) ("We interpret this section as imposing an absolute duty on the employer to turn over to the union all funds deducted.).

What's more, an agency's failure to deduct unions dues from an authorizing employee amounts to an unfair labor practice. *See DHS, SSA, Chicago, Illinois & AFGE, Local 1346, AFL-CIO*, 13 FLRA 264, 265 (1983) (adopting the ALJ's finding that ceasing to deduct union dues violates 5 U.S.C. § 7116(a)(1) and (8)).

¹ Local 2094; Local 1739; Local 1667; Local 2610; Local 2305; Local 1739; Local 906; Local 495; Local 390; Local 611; Local 789; Local 17.

² Similarly to the MCBA, 5 U.S.C. § 7115(b) terminates dues withholding when: (1) the MCBA ceases to apply to the employee; or (2) the employee is suspended or expelled from membership in AFGE.

Here, the membership at twelve (12) AFGE/NVAC locals submitted SF-1187 forms authorizing payroll deductions for the withholding of union dues. SF-1187 forms amount to a written assignment authorizing the Department to deduct union dues from an employee's paycheck. (Attachment B).³ Therefore, by failing to withhold union dues from the membership at twelve (12) locals, the Department failed to honor the SF-1187 assignments in violation of the law.

B. Failure to Bargain

Article 47 of the MCBA (Mid-Term Bargaining) prescribes the negotiated procedures the Parties must utilize in bargaining midterm changes. Here, the Department unilaterally decided that it would double employees' dues withholding without bargaining with the Union. Such a change is more than *de minimis* as approximately 6,000 employees were affected. Further, many of these employees have their health insurance tied to their dues, which was also impacted by the Department's failure to withhold the dues. The Department failed to bargain the procedures and appropriate arrangements of its attempt to remedy the violation. Notably, Mr. Ferguson's email announced the decision as a *fait accompli*.

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

- Article 2 of the MCBA: requiring the Department to comply with federal law and regulations;
- Article 45 of the MCBA: requiring the Department to withhold union dues from the paychecks of authorizing employees;
- Article 47 of the MCBA: requiring the Department to bargain with the Union in good faith;
- Article 49 of the MCBA: requiring the Department to have due regard for the obligations imposed by 5 U.S.C. Chapter 71;
- 5 U.S.C. § 7115(a): requiring the Department to withhold union dues from the paychecks of authorizing employees;
- 5 U.S.C. § 7116(a)(1) and (8): requiring the Department to withhold union dues from the paychecks of authorizing employees;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedies Requested

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

³ "This completed form is used to request that labor organization dues be deducted from your pay and to notify your labor organization of the deduction."

- To provide the Union with a listing of employees for whom the Department unlawfully failed to withhold union dues, including the amount for each employee and the total amount of dues it failed to withhold;
- To cease and desist the double deduction scheduled for the pay period ending February 15, 2020;
- If the double deduction has been withheld, to return the extraneous deduction to each affected bargaining unit employee;
- To remit to the Union the entirety of the dues that should have been withheld on pay period ending January 18, 2020 and waive any claim of collection against bargaining unit employees for the Department's failure to withhold the dues;
- To fully comply with its contractual obligations under Articles 2, 45, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. §§ 7115 and 7116.
- To post an electronic notice, signed by the VA Secretary, to all VA bargaining unit employees that the Department violated the MCBA and law and that the Department will refrain from further violations of the MCBA and law;
- To make whole the Union and any employee affected by the Department's violations;
- 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
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Ibidun Roberts, Supervising Attorney, AFGE/NVAC