



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-3/27/20

Date: March 27, 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: Thomas Dargon, Jr., 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 properly compensate bargaining unit employees during the COVID-19 pandemic

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 (“Agency” or “VA”) for failing to properly compensate bargaining unit employees during the Novel Coronavirus Disease (“COVID-19”) pandemic. To date, the Agency has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the VA violated Articles 2, 3, 36, 47, and 49 of the MCBA, the Fair Labor Standards Act, the Federal Employees Pay Comparability Act, 5 U.S.C. §7116(a), and any and all other relevant articles, laws, regulations, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. On March 13, 2020, President Trump issued a proclamation declaring a national emergency.¹ As a

¹ Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020).

result of the COVID-19 pandemic, several VA facilities² implemented policies and procedures requiring AFGE bargaining unit employees to report for screenings and questioning during uncompensated portions of their tour of duty, such as before their shifts and during lunch breaks. This violates law and contract. This also constitutes a change in conditions of employment. The Agency did not notify the Union and provide it with an opportunity to bargain concerning this change. In doing so, the Agency failed to satisfy its bargaining obligations with the Union.

By failing to properly compensate bargaining unit employees for the time spent complying with mandatory screenings and questioning related to COVID-19, the Agency violated the Fair Labor Standards Act and the Federal Employees Pay Comparability Act, as applicable. Article 36 of the MCBA also requires the Agency to remit timely and proper compensation. Further, in refusing to notify, consult, and negotiate in good faith with the Union prior to implementing this change, the Agency committed an unfair labor practice under 5 U.S.C. §7116(a)(1) and (a)(5). 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 5 U.S.C. §7116 and applicable the wage and hour statutes identified above, the Agency failed to comply with Article 2. Additionally, Article 3 encourages the Parties to maintain a cooperative labor-management relationship that is based on mutual respect, open 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 this change, the Agency renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes. Finally, the Agency violated Article 47, Section 2, and Article 49, Section 4, which set forth the Parties' mid-term bargaining duties at the national level.

Violation

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

- Article 2 of the MCBA: requiring the Agency to comply with federal law and regulations;
- Article 3 of the MCBA: requiring the Agency to maintain an effective, cooperative labor-management relationship with the Union;
- Article 36 of the MCBA: requiring the Agency to remit timely and proper compensation;
- Articles 47 and 49 of the MCBA: 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;
- Fair Labor Standards Act, 29 U.S.C. §201, *et seq*: requiring the Agency to compensate employees for hours worked;
- Federal Employees Pay Comparability Act, 5 U.S.C. §5542, *et seq*: requiring the Agency to compensate employees for hours worked;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

² Affected facilities include, for example, the VA Palo Alto Health Care System and the Salem VA Medical Center.

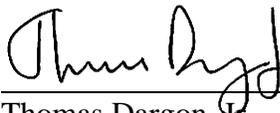
Remedy Requested

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

- To return to the *status quo ante*;
- To fully comply with its contractual obligations under Articles 2, 3, 36, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a);
- To properly compensate bargaining unit employees in accordance with 29 U.S.C. §201, *et seq.*, and 5 U.S.C. §5542, *et seq.*;
- To distribute an electronic notice posting to all bargaining unit employees concerning the Agency's failure to satisfy bargaining obligations with the Union prior to implementing changes in conditions of employment;
- To make-whole any bargaining unit employee adversely affected by the Agency's actions, including, where applicable, back pay, liquidated damages, interest, and attorney's fees;
- 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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