



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-3/4/20

Date: March 4, 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 changes to clinicians’ leave and overtime policies.**

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 “Agency) for failing to notify and bargain with the Union over a change in conditions of employment regarding leave and overtime policies for VA Connecticut Healthcare System (“VACHS”) employees. 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, 21, 35, 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

According to VACHS policy, certain clinicians are required to work twenty-six (26) weekends in a calendar year. Although these employees have to submit annual leave (“AL”) requests in advance, the Agency never required them to find their own coverage for their days off. However, on a continuing and ongoing basis, the Department now mandates that these employees, must on their own, seek available employees to cover their requested leave days. Under this policy, employees must “swap” their weekend workdays with someone else. If they can’t find someone to swap with, their leave is denied.

A second, but related violation concerns the restriction of overtime. The longstanding practice at VACHS was that these clinicians could cover the shift of anyone who was on leave by working voluntary overtime. The Agency has now ceased all voluntary overtime and only utilizes the swap method. As a result, not only does the leave swap deny employees a rest and relaxation period of their choosing, it also denies them the ability to work overtime.

Here is an example of the policy in practice: if Employee A elects to take their normally scheduled workday of Sunday, May 24, 2020 as AL, they have to put in the request, find someone to cover that shift for them, and also make up that weekend workday. Historically, Employee B could elect to work overtime that day, but overtime is now unavailable. Instead, in order for Employee A to get their requested day off, they have to work for Employee B on Saturday, May 30 (Employee A’s regularly scheduled day off and Employee B’s regular weekend workday). Thus, Employee A has merely swapped their weekend work schedule with Employee B. This swap often causes both Employee A and Employee B to work two consecutive weekends, which denies them the benefit of truly enjoying a rest and relaxation period—the purpose of which is agreed upon in the parties’ agreement (“Annual Leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and unscheduled purposes.”) MCBA Article 35, Section 2.

These policies constitute a change in conditions of employment; thus, requiring consultation with the NVAC. However, the Department failed to provide the Union with notice and an opportunity to bargain. The Union has identified AFGE Locals 1674 and 2138 as affected by this change.

Violations

By denying employees annual leave because of management’s failure to properly exercise its responsibility of determining staffing coverage, the Agency not only violates the Master Agreement, but also jeopardizes patient care. Employees are denied their right to a rest and relaxation period which will result in overworked and tired employees in professions that require the most alert and attentive employees – clinicians.

In addition, the Agency improperly terminated the past practice of allowing employees to work overtime to cover each other’s shifts. A past practice is enforceable as a formally negotiated workplace agreement. *Dep’t of the Air Force, Scott Air Force Base, Ill.*, 19 FLRA

136, 149-50 (1985) (an agency's past practice of granting routine overtime could not be terminated absent bargaining over the impact and implementation of the change). An agency violates its obligation to bargain in good faith when it changes a past practice prior to the completion of bargaining. *Dep't of Justice, Executive Office for Immigration Review, Bd. of Immigration Appeals*, 55 FLRA 454, 456 (1999).

By refusing to notify, consult, and negotiate in good faith with the Union before altering the method by which VACHS clinicians: 1) can request and are granted annual leave; and, 2) can work voluntary overtime, the Department committed an unfair labor practice under 5 U.S.C. § 7116(a)(1), (5) and (8). 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 communication, consideration of each other's views, and minimizing collective bargaining disputes. By failing to notify, consult, and negotiate with the Union before implementing changes to the leave policy, the Department renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes.

Article 35 sets forth the negotiated procedures for the requesting and approving of annual leave. This Article explicitly states that leave shall not be restricted arbitrarily or capriciously. And while Article 35 authorizes local level negotiations over annual leave procedures, the Department committed an independent violation of Article 47, Section 4, which requires that the NVAC be notified of changes in conditions of employment affecting the interests of bargaining unit employees in two or more locals. Consequently, the Department also violated Article 49, Section 4, which sets forth the parties' responsibilities regarding bargaining at the national level.

Remedies Requested

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

- To return to the *status quo ante* until bargaining obligations are met;
- To cease and desist any practice that denies the assignment of overtime by forcing employees to swap work shifts with other employees;
- To fully comply with its contractual obligations under Articles 2, 3, 21, 35, 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 changes in conditions of employment, in violation of the MCBA and federal law;
- To make-whole any bargaining unit employee adversely effected by unilateral changes in conditions of employment regarding annual leave and voluntary overtime; 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
Bill Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC