



# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE

NG-04/03/2020

**Date:** April 3, 2020

**To:** Tracy Schulberg  
Executive Director  
Office of Labor-Management Relations  
U.S. Department of Veterans Affairs  
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Washington, DC 20420  
[tracy.schulberg@va.gov](mailto: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 maximize telework for all eligible employees during a deadly 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 for failing to maximize telework for all eligible employees during a deadly pandemic. To date, the Department has failed to remedy this violation, and as such: 1) jeopardizes the safety and health of VA employees and veterans; and 2) continues to violate governmental guidance, the MCBA, and federal law.

Specifically, the Department violated Articles 2, 3, and 20 of the MCBA; 29 C.F.R. §1960.8; OMB Memo M-20-16; and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

## STATEMENT OF THE CASE

### **Background**

On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. (Attachment A). On March 13, 2020, President Trump issued a proclamation declaring a national emergency. (Attachment B). As a result of the pandemic, on March 17, 2020, the Office of Management and Budget (“OMB”) issued guidance to all federal agencies to “maximize



telework across the nation for the Federal workforce (including mandatory telework, if necessary), while maintaining mission-critical workforce needs.” (Attachment C). Pursuant to this guidance, as of March 17, 2020 and until further notice, the Office of Personnel Management’s (“OPM”) operating status dictates “maximum telework flexibilities to all current telework eligible employees, pursuant to direction from agency heads.” (Attachment D).

Despite this guidance, several Department facilities<sup>1</sup> have denied telework to eligible employees, posing a significant and unnecessary health risk to employees. This violates governmental guidance, federal law, and the MCBA.

By requiring telework eligible employees to report to their official duty stations where employees have confirmed cases of the virus<sup>2</sup> and where contact with COVID-19 patients or with those interacting with patients is likely, the Department violated Agency responsibilities promulgated under the Occupational Safety and Health Act of 1970 to furnish a place of employment free from recognized hazards. In doing so, the Department also violated Article 2 of the MCBA, which requires the Department to comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Additionally, the Department is in violation of Article 20 of the MCBA, which requires the Department, during an emergency situation, to discuss with the Union possible temporary telework arrangements for affected employees. By failing to discuss possible temporary telework arrangements, the Department is in violation of Article 3 of the MCBA, which 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.

Lastly, the Department is not in compliance with OMB guidance to maximize telework for the Federal workforce. (Attachment C). The employees seeking telework are telework eligible. Yet, the Department’s current policy is to deny new telework agreements regardless of the circumstances and eligibility of the individual employee. (Attachment E). What’s more, the Department is denying telework to eligible employees within populations identified by the Centers for Disease Control and Prevention (“CDC”) as a higher risk for serious illness from COVID-19. This is contrary to OMB guidance advising federal agencies to restrict such individuals from federal facilities. (Attachment C). Remarkably, the Department is even requiring employees who telework part-time to report to their official duty stations. Granting telework to these employees would in no way alter mission-critical workforce needs.

## **Violation**

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

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<sup>1</sup> Affected facilities include, for example, the VA Palo Alto Health Care System, Atlanta VA Medical Center, and Dayton VA Medical Center.

<sup>2</sup> As of March 27, 2020, for example, the VA Palo Alto Health Care System, Atlanta VA Medical Center, and Dayton VA Medical Center have 5, 2, and 1 confirmed cases, respectively.

- Article 2 of the MCBA: requiring the Department to comply with all federal law and regulations;
- Article 3 of the MCBA: requiring the Department to maintain an effective, cooperative labor-management relationship with the Union;
- Article 20 of the MCBA: requiring the Department, during an emergency situation, to discuss with the Union possible temporary telework arrangements for affected employees;
- 29 C.F.R. §1960.8: requiring the Department to furnish to each employee employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm;
- Any other law, rule, regulation, or Master Agreement provision not herein specified.

### **Remedies Requested**

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

1. To immediately approve telework for all eligible employees;
2. To cease and desist further violations of the MCBA and law;
3. To fully comply with its contractual obligations under Articles 2, 3, and 20 of the MCBA and its statutory obligations under 29 C.F.R. §1960.8.
4. 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;
5. To make whole the Union and any employee adversely affected by the Department's violations, including, but not limited to, restoration of leave or straight time pay;
6. To pay reasonable attorney's fees and litigation costs under 5 U.S.C. §5596; and
7. 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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