

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-5/21/2020

7S/00393834

**Date:** May 21, 2020

**To:** Kevin Nelson  
Department of Veterans Affairs  
Labor & Employee Relations Specialist  
Office of Human Capital Management (OHCM)  
VBA Central Office  
[kevin.nelson2@va.gov](mailto:kevin.nelson2@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 in the matter of the Department of Veterans Affairs for failure to provide the Union notice and an opportunity to bargain over changes in conditions of employment regarding the performance standard tracking tool.**

## STATEMENT OF THE CHARGE

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 (“NVAC” or “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 (“Department”) for failure to provide the Union notice and an opportunity to bargain over changes in conditions of employment regarding the performance standard tracking tool for Veterans Benefits Administration (“VBA”) bargaining unit employees (“BUE”). To date, the Department has failed to remedy this violation, and as such, continues to violate its contractual obligations and federal law.

Specifically, the Department violated Articles 2, 3, 27, 47 and 49 of the MCBA; U.S.C. § 7116(a); the Employee Performance Report Tool Memorandum of Understanding (“EPR Tool MOU”); 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**

In 2017, the VBA and the Union (collectively, the “parties”) entered into an agreement concerning the Employee Performance Report (“EPR”) Tool. The EPR Tool MOU requires that the parties notify each other of any changes to the EPR Tool that may adversely affect employees and negotiate over those changes, as necessary. The EPR Tool MOU remains in effect, and is attached as Exhibit A.

On April 30, 2020, the VBA Office of Field Operations, Operations Analysis, sent an email to Regional Office Directors informing them of several updates to the EPR Tool that were scheduled to take effect as of May 1, 2020. The EPR Tool calculates an employee’s output by comparing available hours of work to the VBA national transactional database to show the amount of work an employee has completed. Output is a critical element of a BUE’s performance plan. Therefore, changes to the output element can adversely affect a BUE’s job performance.

The changes announced on April 30 were to the following components of the EPR Tool:

- Credit Exam Clarification Responses - VSRs will receive production credit for responses to exam clarification requests.
- Award Cycle Deferrals - VSRs will not receive credit for both an RFD and an Award Deferral when the Award Deferral is generated the same day as the RFD by the same user on the same claim. Instead only one credit will be noted.
- Suspense Update Credits with no Material Changes - VSRs will no longer get production credit for suspense only transactions when there is no change to the suspense date or suspense reason (to include free text).
- Development to Development Deferrals - VSRs will no longer get production credit for deferrals when the deferral is in the development life cycle (i.e. deferral from RFD to open).
- Exclude Credit for "Exam Request - Processing" tracked items - There have been instances where employees have received credit by creating a free text tracked item that exactly matches the system generated tracked item title. The credit will end.
- Exclude Credit for Tracked Items Marked in Error the Same Day - VSRs will not receive credit when a Tracked Item is created and marked in error on the same day, in the same claim, and by the same user.
- SOC credit on 930s - RVSRs may now receive crediting for SOC/SSOCs using the same crediting note convention used on EP 170/070s appeals work for 930 series EPs.
- Ready for Decisions generated from deferrals for Rating Decisions within the award cycle will not count in efficiency calculations.

- GS 5 VSRs and Standards - have been added into EPR.

These unilateral modifications to the manner in which some BUE receive credit for their work constitute a change in conditions of employment that required advance notification to the Union and an opportunity to bargain. Not only has the Department failed to communicate the EPR updates to employees, it also failed to provide the Union notice and an opportunity to bargain over these changes in violation of the MCBA, the EPR Tool MOU and federal law.

## **Violations**

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 3 of the MCBA: requiring the Department to maintain an effective, cooperative labor-management relationship with the Union;
- Article 27 of the MCBA: requiring the Department to communicate performance measurement indicators, in writing, to affected employees;
- Article 47 of the MCBA: requiring the Department notify and bargain with the NVAC President over proposed changes in personnel policies, practices, or working conditions affecting two or more local unions;
- Article 49 of the MCBA: requiring the Department bargain with the Union prior to making changes in conditions of employment;
- The EPR Tool MOU: requiring the Department negotiate with the Union over changes that may adversely impact employees;
- 5 U.S.C. § 7116(a)(1) and (a)(5): requiring the Department to consult and negotiate in good faith; and
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

## **Remedies Requested**

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

- Return to the *status quo ante*;
- Fully comply with its contractual obligations under Articles 2, 3, 27, 47, and 49 of the MCBA and the EPR MOU; as well as its statutory obligations under 5 U.S.C. §7116(a);
- Distribute an electronic notice posting to all VBA BUE concerning the Department's failure to satisfy its bargaining obligations with the Union prior to implementing changes in conditions of employment;

- Restore any performance elements that were lowered as a result of the Department's unilateral implementation of the EPR Tool changes from the date of implementation through the completion of bargaining;
- Make-whole any bargaining unit employee adversely affected by the Department's improper implementation of the changes, including back pay, interest, and attorney's fees; and to
- Agree to comply with any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

### **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. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.

Submitted by,



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AFGE, AFL-CIO  
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Washington, DC 20001  
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cc: Alma L. Lee, President, AFGE/NVAC  
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC  
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC

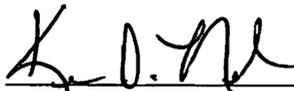
# **EXHIBIT A**

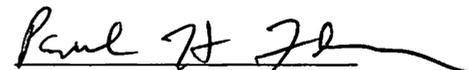
# MEMORANDUM OF UNDERSTANDING

## Employee Performance Report (EPR) Tool

The following constitutes an agreement between the Department of Veterans Affairs, Veterans Benefits Administration (VBA) and the American Federation of Government Employees (AFGE), AFL-CIO National VA Council (NVAC) #53, (Union) regarding the Employee interface for new VSR standards

1. ASPEN will remain in use until it is replaced by Workload and Time Reporting System (WATRS). Employees can continue to utilize their personal ASPEN reports to review their deductible time and quality reviews.
2. Employee Performance Reports (EPR) will be used to track and calculate output/productivity. This tool is an interim tool until WATRS is fully implemented. EPR calculates each employee's individual output by linking available hours in ASPEN with VBA's national transactional database to show all work completed by each employee. Employees will be able to access their own EPR each day which will include data through their prior day of work. Except in rare circumstances, the supervisor and employee will input or validate overtime, deductible time and credit hours earned/used in ASPEN within two business days.
3. All affected employees and their supervisors will be provided training on the changes to ASPEN and the EPR. No employee will have leave cancelled or denied due to this training. Employees will be on deductible time for this training. Any questions not answered during these training sessions will be compiled and forwarded to the VBA mid term team co-chairs so that clarification can be sort out. The local union will be invited to these trainings.
4. Management will not hold employees accountable for factors or extenuating circumstances which affect performance that are beyond the employees' control in compliance with Article 27.
5. If after implementation either party is made aware of issues that may adversely affect employees, both parties agree to discuss the issues and work to mutually resolve the issues for the employees. Should discussions not resolve the issues; the parties will implement the negotiating process.
6. Management shall provide a copy of this MOU to the local president and/or designee at each AFGE local within 10 days of the date this MOU is signed.

  
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Kevin D. Nelson  
For the Agency

  
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Paul Fleming  
for AFGE/NVAC

04/06/17  
Date