



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-06/10/2020

Date: June 10, 2020

To: Michael Picerno
Acting Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
michael.picerno@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 bargain 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”), 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 for failing to bargain during the COVID-19 pandemic. To date, the Department has failed to remedy this violation and as such continues to violate past practice, the MCBA, and federal law.

Specifically, the Department violated Articles 2, 3, 47, and 49 of the MCBA; U.S.C. §7116(a); 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). On June 2, 2020, Secretary Wilkie issued bargaining guidance to Department officials. (Attachment C). This guidance instructs officials to refrain from bargaining with unions representing Department employees during the pandemic. (Attachment C). Specifically, if the Department has a bargaining obligation, the guidance directs officials to bargain post-implementation. (Attachment C). If a union submits a demand to bargain, the



guidance directs officials to satisfy its bargaining obligations “as soon as practicable.” (Attachment C).

Several AFGE locals¹ have submitted demands to bargain or attempted to bargain over a change to a condition of employment. Regardless of the specific proposal, each local received substantially similar responses from the Department mirroring the June 2, 2020 guidance. (Attachment D & E).² The Department’s blanket refusal to bargain with the Union is unlawful.

Articles 47 and 49 of the MCBA require the Department to bargain with the Union over changes to conditions of employment. Additionally, under section 7116(a)(1) and (5) the Union “must be given adequate notice by agency management and an opportunity to request bargaining over the impact and implementation of changes in working conditions affecting unit employees.” *Gen. Servs. Admin and AFGE*, 15 FLRA 22, 24 (1984) (citing *Internal Revenue Service*, 10 FLRA 326 (1982)).

Here, the Department refused to bargain over various changes to conditions of employment, including but not limited to, changes to new employee orientation,³ leave,⁴ and compressed work schedules.⁵ The Department’s refusal to bargain over these changes constitutes an unfair labor practice. *See* 5 U.S.C. 7116(a)(1) and (5).

Under section 7106(a)(2)(D) of the Civil Service Reform Act of 1978, the Department has the right “to take whatever actions may be necessary to carry out the agency mission during emergencies.” However, this right does not remove the obligation to bargain. The Department’s rights under section 7106(a) “are subject to the union's right to bargain over procedures, under section 7106(b)(2), and appropriate arrangements, under section 7106(b)(3) of the Statute.” *NAGE, Local R1-203 & U.S. Dep't of the Interior*, 55 FLRA 1081, 1089 (1999).

Further, during an emergency, not every proposal relating to agency action is nonnegotiable. “[O]nly proposals which either directly interfere with agency action or prevent the agency from taking the emergency action are inconsistent with section 7106(a)(2)(D) and, therefore, nonnegotiable.” *NTEU, Chapter 22*, 29 FLRA 348, 349 (1987). Therefore, regardless of the Department’s right to take necessary action during emergencies, the Department is nonetheless required to bargain over negotiable union proposals.

By failing to bargain with the union during the emergency, the Department committed an unfair labor practice under section 7116(a)(1) and (5). 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. Finally, by failing to consult and negotiate in good faith with the Union, the Department is in violation of Article 3 of the MCBA, which encourages the Parties to maintain a cooperative labor-

¹ Affected Locals include, for example, Local 940, 1224, 906, 2200, 2483, 1219, 2798, 2107, 2384, 548, 2157, 2583, 85, 1915, 1738, 2152, 2028, 4071, 31, 1020, 3197, 2483, 31, 2823, 1133, 2209, and 609.

² These two responses were received by Locals 2157, 2583, and 2152.

³ Article 49 of the MCBA.

⁴ Article 35 of the MCBA.

⁵ Article 21 of the MCBA.

management relationship that is based on mutual respect, open communication, consideration of each other's views, and minimizing collective bargaining disputes.

Violation

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 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 47 and 49 of the MCBA: requiring the Department to bargain with the Union over changes to conditions of employment;
- 5 U.S.C. §7116(a)(1) and (5): requiring the Department to consult and negotiate in good faith with the Union;
- Any and all other relevant articles, laws, rules, 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:

1. To return to the *status quo ante*;
2. To rescind the bargaining guidance titled "Department Bargaining Guidance During Coronavirus Disease (COVID-19) Pandemic;"
3. To immediately engage in local and intermediate bargaining;
4. To cease and desist further violations of the MCBA and law;
5. To fully comply with its contractual obligations under Articles 2, 3, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a).
6. 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;
7. To make whole the Union and any employee adversely affected by the Department's violations;
8. To pay reasonable attorney's fees and litigation costs under 5 U.S.C. §5596; and
9. 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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