



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-08/07/2020

7H/00394441

Date: August 7, 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: Sarah Hasan, 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 failure to provide the Union notice and an opportunity to bargain over the COVID-19 Screening 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 the use and implementation of the COVID-19 Screening Tool. To date, the Department has failed to remedy this violation, and as such, continues to violate the Master Agreement and federal law.

Specifically, the Department violated Articles 2, 3, 21, 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

On July 13, 2020, employees of the Fort Wayne, IN VAMC (Local 1384), among other VA facilities in VISN 10 (e.g.: Locals 1020 and 2031), were notified of the launch of a COVID-19 screening tool that could be accessed from employee phones. The tool went “live” as of July 15, 2020 and employees were strongly encouraged to use the online screening tool on their personal devices prior to entering the facility to allegedly expedite the screening process on-site. Notably, employees were still required to check in at the guard’s desk and/or undergo further screening, in spite of using the screening tool.

The VA did not inform the NVAC of either its development or use of the screening tool prior to its launch. Similarly, the VA failed to bargain over the implementation or use of the screening tool prior to its launch. On July 16, 2020 the NVAC filed a demand to bargain over the COVID-19 screening tool. To date, the VA has failed to engage in any bargaining efforts with the NVAC. The changes associated with the COVID-19 screening tool include:

- Requiring employees to expend additional time to complete the screening process while not on duty and without pay.
- Causing additional delays to employees attempting to reach their duty station in a timely manner, as screened employees will still have to wait in line to be processed in person.
- Requiring employees to use personal cell phones, without compensation, to the benefit of the Agency.
- Failing to identify which safeguards, if any, are in place to secure personal medical information obtained through the screening tool.

These unilateral modifications to the tours of duty, work performed, use of personal devices, and accumulation of employee’s private health data constitute a change in conditions of employment that requires advance notification to the Union and an opportunity to bargain. Not only has the Department failed to communicate changes associated with the COVID-19 screening tool to its employees, it also failed to provide the Union notice and an opportunity to bargain over these changes.

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 21 of the MCBA: requiring the Department to compensate employees for credit hours worked in excess of their schedules and negotiate over alterations, procedures, and time frames for posting schedules;
- 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;
- 5 U.S.C. § 7116(a)(1) and (a)(5): requiring the Department to consult and negotiate in good faith with the Union; 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, 21, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a);
- 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;
- Agree to comply with any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.
- Agree to any and all other appropriate remedies 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. 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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cc: Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC