



# 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-08/07/2020

**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](mailto: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 failure to bargain over OI&T telework

## 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 (“AFGE” or “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 Veteran Affairs (“Department”) for failing to provide the Union notice and an opportunity to bargain over changes in conditions of employment regarding telework at the Office of Information Technology (“OI&T”). 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, 20, 47, and 49 of the MCBA; 5 U.S.C. §7116(a); and any and all other relevant articles, laws, regulations, customs, 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 8, 2020, the Department sent an email to NVAC Mid-Term Bargaining Chairperson Oscar L. Williams, Jr., District 6 Representative Willie Haywood, AFGE Local 1020 President Linda Rademaker, and AFGE Local 1384 President Eric Clapp regarding



telework at the OI&T. (Attachment A). The email included an attachment from OI&T Management to AFGE Locals 1020 and 1384 with the subject line “Ending Remote work.” (Attachment B). The attachment served to notify the Union that, effective August 3, 2020, the Department was unilaterally ending the voluntary telework it previously offered to OI&T employees. Two days later on July 10, 2020, Area Manager Joseph Grey sent an email to various OI&T bargaining unit employees at the VA Northern Indiana Health Care System instructing them to return to work pursuant to the Department’s unilateral termination of voluntary telework. (Attachment C). The Department’s unilateral termination of voluntary telework will require non-clinical bargaining unit employees to return to their worksites at medical facilities during the pendency of a deadly pandemic. Therefore, the Department’s conduct violates the MCBA and federal law.

### **A. Pandemic Telework**

On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. (Attachment D). On March 13, 2020, President Trump issued a proclamation declaring a national emergency. (Attachment E). 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 F).

On April 20, 2020, OMB issued guidance to all federal agencies to reopen and ramp back up government operations. Yet still, OMB advised:

Until agencies have resumed normal operations and risk is minimal, all Federal agencies are encouraged to maximize telework flexibilities to all eligible workers within those populations that the CDC has identified as being at higher risk for serious complications from COVID-19 (CDC High Risk Complications) and to CDC-identified special populations including pregnant women (CDC Special Populations), regardless of location.

Attachment G.

Despite this guidance, the Department’s unilateral termination of voluntary telework denies 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 at medical facilities where contact with employees and 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 a pandemic, 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.

## **B. Failure to Bargain**

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 unilaterally ended voluntary telework for OI&T employees. Such a change is more than *de minimis* as bargaining unit employees will now be forced back to work at medical facilities where 2,148 patients and 42 employees have died after contracting the virus. (Attachment H). Therefore, the Department's failure to bargain over changes in conditions of employment regarding telework at the OI&T is violative of the MCBA and federal law.

Under section §7106(a)(2)(D), 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 because 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). Therefore, regardless of the Department's right to take necessary action during emergencies, the Department was nonetheless required to bargain over its termination of voluntary telework at the OI&T.

By failing to bargain over changes in conditions of employment regarding telework at the OI&T, 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-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 20 of the MCBA: requiring the Department, during a pandemic, to discuss with the Union possible temporary telework arrangements for 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 to bargain with the Union prior to making changes in 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;
- 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 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 immediately inform all OI&T bargaining unit employees of their eligibility for immediate telework;
2. To immediately approve telework for all eligible OI&T employees;
3. To cease and desist further violations of the MCBA and federal law;
4. To fully comply with its contractual obligations under Articles 2, 3, 20, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a).
5. 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;
6. 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;
7. To pay reasonable attorney's fees and litigation costs under 5 U.S.C. §5596; and
8. 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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