



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE NG-1/29/19

Date: January 29, 2019

To: Tracy Schulberg
Acting Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420
tracy.schulberg@va.gov
Sent via electronic mail only

From: Thomas Dargon, Jr., 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 violating contractual requirements and federal law by contracting out bargaining unit work in the VA Office of Community Care Call Centers

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 Agency for violating contractual requirements and federal law regarding the contracting out of bargaining unit work in the VA Office of Community Care Call Centers. To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the VA violated Articles 2, 3, and 11 of the MCBA, 41 U.S.C. §1710, 31 U.S.C. §501, OMB Circular A-76, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On January 4, 2019, the VA Office of Labor-Management Relations provided written notification to the Union, via email, entitled “Customer Service Center – Contracting Out Provider Calls.” The email explained that the VA Office of Community Care (“VA-OCC”) Customer

Service Center decided to undertake a “new effort to supplement [VA-OCC] Contact Center staff with contract support in addressing provider calls.” Specifically, the email states that VA-OCC is “planning to supplement the [C]ontact [C]enter staff with contractors that will handle provider calls only, freeing up VA staff to properly attend to Veterans and their family members.” Despite the fact that this work was previously performed by bargaining unit employees in VA-OCC, the Agency claims that the change will have “no impact on current employees [sic] work or workload.”

Based on the Agency’s own notification email to the Union, there is no dispute that provider calls were previously handled by VA employees. Therefore, by hiring private contractors to perform these functions, the Agency has effected a direct conversion of bargaining unit work. This change may result in a loss of overtime opportunities and other benefits.

Article 2 of the MCBA requires that the Agency comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Federal statutes 41 U.S.C. §1710 and 31 U.S.C. §501 prohibit government agencies from converting work from federal employees to contractors without first conducting a formal cost comparison. The cost comparison process is currently governed by OMB Circular A-76; however, the VA failed to conduct a formal cost comparison for contracting out provider calls in the VA-OCC Contact Centers. Therefore, in violating 41 U.S.C. §1710, 31 U.S.C. §501, and OMB Circular A-76, the Agency also violated Article 2 of the MCBA.

Article 11 of the MCBA includes a series of obligations concerning the contracting out of bargaining unit work. Under Section 1, the Agency was required to provide periodic briefings to Union officials at the local and national levels concerning formal cost comparison processes, which it failed to do. Under Section 2, the Agency is required to invite a local union representative to attend site visits by potential contractors, which, upon information and belief, it also failed to do. Further, Article 3 of the MCBA 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. By directly converting bargaining unit work to contractor performance, the Agency renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes.

Violation

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

- Articles 2 and 11 of the MCBA, requiring the Agency to comply with federal law and regulations, notify the Union, and provide an opportunity to bargain when the Agency contracts out bargaining unit work;
- Article 3 of the MCBA: requiring the Agency to maintain an effective, cooperative labor-management relationship with the Union;
- OMB Circular A-76, requiring government agencies to conduct a formal cost comparison;
- 41 U.S.C. §1710 and 31 U.S.C. §501, prohibiting government agencies from converting work from federal employees to contractors without first conducting a cost comparison;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

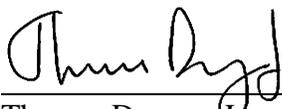
Remedy Requested

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

- Cease and desist from illegally contacting out bargaining unit work;
- Fully comply with its contractual obligations under the MCBA;
- Fully comply with all applicable federal laws, rules, and regulations;
- Make-whole any employee adversely affected by the contracting out of bargaining unit work in VA-OCC, including backpay, interest, and attorney's fees;
- 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. If you have any questions, please contact the undersigned at 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.



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