



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE NG-10/10/18

Date: October 10, 2018

To: Kimberly McLeod
Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
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kimberly.mcleod@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 improperly administering leave procedures during Hurricane Florence

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 improperly administering leave procedures during Hurricane Florence. To date, the VA has failed to remedy these violations, and as such, continues to violate the MCBA and federal regulations.

Specifically, the VA violated Article 35 of the MCBA, 5 USC §6329c, 5 CFR Part 630 Subpart P, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

In September 2018, Hurricane Florence impacted the east coast of the United States. It affected the day-to-day operations of numerous VA facilities, particularly those located in Virginia, South Carolina, and North Carolina. During this time, certain locations were under mandatory evacuation orders or were operating in states of emergency. Residents were subject to state and local travel restrictions.

The Administrative Leave Act of 2016 created four new categories of statutorily authorized paid leave, including “weather and safety leave.” 5 USC §6329c. Weather and safety leave is justified when an agency determines that an employee is “prevented from safely traveling to or performing work” due to, for example, a hurricane. 5 USC §6329c(b). While regulations from the Office of Personnel Management exempt “emergency employees” who are “critical to agency operations” from receiving weather and safety leave, 5 CFR §630.1605, the regulations also state that agencies must, to the extent practicable, “inform employees of their designation as emergency employees well in advance” of an act of God. 5 CFR §630.1602.

Bargaining unit employees were adversely affected by the Agency’s failure to comply with statutory, regulatory, and contractual requirements regarding extreme weather conditions. For example, in and around Charleston, SC, employees were not notified in advance of their designation as “emergency employees.” Facilities did not have enough meals and sleeping arrangements for the employees required to report to duty during the hurricane. In Hampton, VA, employees were denied authorized leave, including weather and safety leave. Certain employees were required to request annual leave in advance of the hurricane, and subsequently, were not granted weather and safety leave. Upon information and belief, employees in Fayetteville, NC and Columbia, SC were also improperly denied weather and safety leave.

Article 35, Section 3 of the MCBA requires that “[s]upervisors should excuse, without charge to leave, tardiness/absences which are brief, infrequent, and for a good cause.” Similarly, Section 11 states that excused absences should be granted when employees providing critical services make “reasonable efforts to get to work and are unable to do so.” Due to unsafe weather conditions, and in the event that facilities did not grant weather and safety leave, good cause existed for the grating of excused or authorized absence.

Violation

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

- Article 35 of the MCBA: requiring the approval of excused absences for good cause;
- 5 USC §6329c: requiring approval of weather and safety leave, where justified;
- 5 CFR Part 630: requiring advance notification to “emergency employees”;
- 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:

- To make-whole any bargaining unit employee adversely affected by this matter, including the restoration of leave, back pay, interest, and attorney’s fees;
- To comply with its obligations under federal law, regulations, and contract;
- 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. If you have any questions regarding this National Grievance, 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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