



NATIONAL VETERANS AFFAIRS COUNCIL

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

Out of Many/One Union
AFGE NVAC/AFL-CIO

7S/00390790

NATIONAL GRIEVANCE NG-10/18/19

Date: October 18, 2019

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

From: Shalonda Miller, 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 notify and bargain with the Union over a change in the manner community providers request services and equipment from the VHA Office of Community Care**

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 Department of Veterans Affairs, Veterans Health Administration (the “Department” or “VHA”) for failing to notify and bargain with the Union regarding a change to the process by which community providers order services and equipment from VHA. 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, 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.



STATEMENT OF THE CASE

Background

On September 24, 2019, Alison Glass, Program Analyst for the Prosthetics and Sensory Aid Services (“PSAS”) and Cheryl Schmitz, from the VHA Office of Community Care (“OCC”), held a teleconference to notify all AFGE Locals that are within VISN 21 of a new process by which community providers may request certain medical services and equipment from the VA. Pursuant to the Mission Act, veteran patients may request and receive medical services and equipment from community-based provider centers and/or clinics if certain qualifying conditions are met. According to the PowerPoint presentation that was used to facilitate the September 24th call, the PSAS began a partnership with the OCC to enhance the Request for Service (“RFS”) process for prosthetic and sensory aids and equipment. The Department also indicated that the new process would be expanded to include orders for clinical consults, labs and radiological services. Historically, only VHA physicians entered orders for services that were requested by community providers. Under the new process, which management claimed would be implemented immediately, OCC nurses would now be responsible for authorizing care and equipment based on the community provider’s request. Additionally, the change in process required that all Community Provider Orders (“CPOs”) be submitted on a newly-minted request for services form—RFS Form 10-10172—which would then be approved or disapproved by a nurse without a VHA physician’s oversight or concurrence.

The new CPO process constitutes a change in conditions of employment. Yet, the Agency failed to notify the national Union and provide an opportunity to bargain prior to implementation. During the call, the Agency claimed that the process had been properly negotiated with the National Nurses Union; but stated that none of the other national unions “wanted to bargain.” Counter to this claim, Oscar Williams, Chairperson of the Mid-Term Bargaining Committee for the NVAC, stated that he never received notice of the change. And therefore, he had not been given an opportunity to submit a demand to bargain.

Violations

By refusing to notify, consult, and negotiate in good faith with the Union prior to implementing the new CPO process, the Agency committed an unfair labor practice under 5 U.S.C. §7116(a)(1) and (a)(5). Additionally, 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. Therefore, in violating 5 U.S.C. §7116, as set forth above, the Agency also failed to comply with Article 2. Further, Article 3 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 failing to notify, consult, and negotiate with the Union prior to implementing the new CPO process, the Agency renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes. Finally, the Agency violated Article 47, Section 2, and Article 49, Section 4, which set forth the parties’ responsibilities regarding mid-term bargaining at the national level.

Remedy Requested

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

- To cease and desist the further implementation of the CPO process;
- To return to the *status quo ante* until bargaining obligations are met;
- 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);
- To distribute an electronic notice posting to all bargaining unit employees concerning the Agency's failure to properly notify the Union of the CPO process change in violation of the MCBA and law;
- To make-whole any bargaining unit employee adversely effected by the improper implementation of the CPO process change; and,
- 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 representative is designated to represent the Union in all matters related to the subject of this National Grievance. If you have any questions regarding this National Grievance, please contact her at 202-639-6424 or shalonda.miller@afge.org.



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cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC