



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-10/23/18

Date: October 23, 2018

To: Kimberly McLeod
Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420
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 U.S. Department of Veterans Affairs for failing to compensate bargaining unit employees in the VHA Office of Member Services

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 failing to compensate bargaining unit employees in the Veterans Health Administration Office of Member Services (“VHA Member Services”) for mandatory training courses. To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, VA violated Articles 2, 3, 47, and 49 of the MCBA, the Fair Labor Standards Act, 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

AFGE represents all bargaining unit employees in VHA Member Services. This includes virtual employees and those stationed at VA facilities with VHA Member Services offices, such as Atlanta, GA, Topeka, KS, Hot Springs, SD, Waco, TX, and Canandaigua, NY.

Historically, newly-hired bargaining unit employees in VHA Member Services received training during New Employee Orientation, which took place during the first one or two weeks of employment. Training included a combination of in-person classes and computer courses in the VA Talent Management System (“TMS”), all of which was performed while in a paid status on duty time. Recently, however, Human Resources officials in VHA Member Services have instructed newly-hired employees to complete a series of TMS courses prior to their Entry on Duty (“EOD”) date and while in a non-duty status. These TMS courses are VA-specific, not vocational in nature. Therefore, the time spent completing these mandatory courses is compensable.

By failing to compensate bargaining unit employees for work performed in completing mandatory TMS courses, the Agency has violated the Fair Labor Standards Act (“FLSA”). In refusing to notify, consult, and negotiate in good faith with the Union prior to initiating a change in conditions of employment for VHA Member Services, namely, by requiring employees to complete TMS training courses prior to their EOD date, 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, 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 comply with the FLSA and by failing to notify, consult, and negotiate with the Union prior to implementing this change, the Agency renounced its commitments under Article 3 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.

Violation

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

- Article 2 of the MCBA: requiring the Agency to comply with federal law and regulations;
- Article 3 of the MCBA: requiring the Agency to maintain an effective, cooperative labor-management relationship with the Union;
- Articles 47 and 49 of the MCBA: requiring the Agency to comply with agreed-upon procedures for mid-term bargaining at the national level;
- 5 U.S.C. §7116(a)(1) and (a)(5): requiring the Agency to consult and negotiate in good faith with the Union;
- 29 U.S.C. §201, *et seq*: requiring the Agency to compensate bargaining unit employees for work performed;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

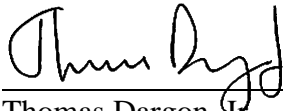
Remedy Requested

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

- To 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 fully comply with the FLSA;
- To make-whole any bargaining unit employee adversely affected by this matter, including back pay, interest, and attorney's fees;
- 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, 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.



Thomas Dargon, Jr.
Staff Counsel, National VA Council
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
Tel: 202-639-6424
Fax: 202-379-2928
thomas.dargon@afge.org

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