



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

NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-02/27/19

Date: February 27, 2019

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

From: Michael A. Gillman, 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 its violation of an MOU regarding smoking on VA campuses and its unilateral implementation of changes to conditions of employment

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 (“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 the July 30, 2008 MOU between the Agency and the Union regarding the Agency’s Smoking Policies (Smoking MOU) and for implementing changes to conditions of employment without completing its bargaining obligations with the Union.

Specifically, the Agency has violated Articles 2, 47, and 49 of the MCBA, committed unfair labor practices under 5 U.S.C. §7116(a)(1) and (5) and violated any and all relevant articles, laws, regulations, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On July 30, 2008 the Agency and the Union entered into the Smoking MOU which secured the following rights for bargaining unit employees at VA facilities:

1. The national parties agree that bargaining unit employees will continue to be provide with reasonably accessible designated smoking areas.



2. Whenever practicable, smoking areas should not be within 35 feet of an entrance to a VA health care building or office building that is routinely used by patients, residents, employees or staff.
3. Where an established smoking area has been located within 35 feet of an entrance due to space constraints or other logistical limitations, such smoking area need not be relocated to comply with this provision of the subject Directive.
4. Bargaining unit employees will be permitted to smoke outside on the grounds so long as they avoid smoking around routinely used building entrances.

See Smoking MOU (a copy of this MOU has been attached to this grievance as Exhibit 1). While the Agency has endeavored to make changes to its smoking policy and renegotiate this MOU, it has not yet completed its bargaining obligation with the Union. Neither an agreement nor a bona fide impasse has been reached. The Smoking MOU remains in full force and effect.

Despite this MOU, it has come to the attention of the Union that multiple VA facilities have implemented changes to smoking policies that violate the terms of the MOU. Under these new “smoke-free” policies, smoking is restricted exclusively to pre-approved shelters in violation of Section 4 of the Smoking MOU or flatly prohibited anywhere on the grounds of the facilities. On information and belief, such policies have been implemented at the Roseburg (OR) VA Health Care System, the Chillicothe (OH) VA Medical Center, and the Milwaukee VA Medical Center. The Union has not agreed to these changes to conditions of employment and bargaining over such changes has not been completed.

The Smoking MOU secures the right of bargaining unit employees to smoke on campus in accordance with its terms. Policies that prohibit smoking outside of smoking shelters or prohibit smoking on VA campuses outright plainly violate the terms of the Smoking MOU. In implementing such policies, the Agency has committed a clear and patent breach of collectively bargained terms that go to the heart of the Smoking MOU. By doing so the Agency has repudiated said terms, thereby committing an unfair labor practice under 5 U.S.C. §7116(a)(1) and (5).

Article 49, Section 4 of the MCBA requires that the Agency provide reasonable *advance* notice *before* making changes to conditions of employment for bargaining unit employees. When the Union wishes to bargain over proposed changes, the process for mid-term bargaining is set forth in Article 47. By implementing changes without completing its bargaining obligations with the Union, the Agency has violated these Articles. Such unilateral implementation also constitutes an unfair labor practice under 5 U.S.C. §7116(a)(1) and (5).

Violation

By persisting in the implementation of the changes to smoking policy for bargaining unit employees the VA violated, and continues to violate, the following:

- The Smoking MOU;
- Article 2 of the MCBA, requiring the Agency to comply with federal law and regulations;

- Articles 47 and 49 of the MCBA, requiring the Agency to comply with agreed-upon procedures for mid-term bargaining and to complete bargaining obligations before implementing changes to conditions of employment;
- 5 U.S.C. §7116(a)(1) and (5), requiring the Agency to negotiate in good faith with the Union;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedy Requested

To remedy the above described violations, the Union asks that the Agency agree to the following:

- Cease and desist the further implementation smoke-free policies;
- Return to the *status quo ante* until bargaining obligations are met;
- Fully comply with its contractual obligations under Articles 2, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a);
- Make-whole any bargaining unit employee adversely affected by the integration (including reimbursement for any fines levied);
- Distribute an electronic notice to all bargaining unit employees identifying the Agency's violations and reaffirming its obligations under the MCBA and federal law; and
- Agree to any and all other remedies appropriate in this matter.

Time Frame and Contact

This is a National Grievance. 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 the 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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