



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-4/18/18

Date: April 18, 2018

To: Kimberly McLeod
Acting 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: 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 unilaterally imposing a bargaining obligation upon the Union without regard to the parties ongoing term negotiations.

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 (“NVAC” or “the Union”) is filing this National Grievance against all associated officials and/or individuals acting as agents on behalf of the Department of Veterans Affairs (“Agency”) for imposing a mid-term bargaining obligation upon the Union without regard to the parties ongoing term negotiations when it notified the Union demanding to bargain over the implementation of the VA Time and Attendance System (VATAS) to request, track and record the use of official time.

By letter dated March 19, 2018, the Agency notified NVAC of its intent to utilize VATAS to track and record official time. The letter also included a demand to bargain over official time allocations at the local level. Oscar Williams, Chairman of the NVAC Mid-Term Bargaining Committee, responded by letter on March 26, 2018, citing the reopener language contained in “Duration of Agreement” section of the Master Agreement which provides, in relevant part:

Section 2 - Duration of Agreement

If renegotiation of an Agreement is in progress but not completed upon the terminal date of this Agreement, this Agreement will be automatically extended until a new agreement



is negotiated.

Section 3 - Reopener

Negotiations initiated by either party during the term to add to, amend, or modify this Agreement may be conducted only by mutual consent of the parties.

As the Agency has already sought to reopen the MCBA, and the parties are in the early stages of term negotiations, the Union declined to engage in mid-term bargaining concerning the establishment of procedures to request, track and record official time through VATAS. Moreover, Article 48 of Master Agreement and Agency policy¹ already address the tracking of official time. Thus, the existing policies are to remain in effect until term negotiations are complete.

In subsequent correspondence with NVAC, the Agency stated it planned to unilaterally implement its proposed changes “on or before July 2018.” By doing so, the Agency violated, and continues to violate, 5 USC § 7114(a)(4), 5 USC § 7114(b)(1), Articles 2, 3, 48 and the Duration of Agreement clause of the MCBA, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified. The Agency has also committed an unfair labor practice pursuant to 5 USC § 7116 *et seq.*

STATEMENT OF THE CASE

Background

On or about March 19, 2018, the Agency notified NVAC of its intent to utilize VATAS to track, request and record official time and provided the Union an opportunity to bargain. The letter also included a demand to bargain over official time allocations at the local level, language specifically provided for in Article 48, Section 10 of the MCBA. Oscar Williams, Chairman of the NVAC Mid-Term Bargaining Committee, responded by letter on March 26, 2018, stating that NVAC does not consent to add to, amend, or modify Article 48 of the Master Agreement, which addresses the tracking of official time, since the parties were already engaged in term negotiations. The Union further explained that to do so would result in piecemeal negotiations, as well as an unnecessary expenditure of time and resources.

In a subsequent letter, dated, April 5, 2018, the Agency clarified that it intended to make mid-term changes to the Official Time article pursuant to Articles 47 and 49 of the MCBA; and provided the Union an opportunity to submit a demand to bargain and proposals, at its choosing. The letter also threatened to unilaterally implement the Agency’s proposed changes if the Union failed to act in the manner the Agency commanded.

On April 11, 2018, the Union responded that the Agency has violated the MCBA by unlawfully insisting that midterm piecemeal agreements be negotiated outside of term bargaining. The Union again asserted its right to withdraw from permissive bargaining at any

¹ VA Handbook 5023, dated April 15, 2002, states that “VA does not require facilities to maintain records of the amount of official time graded employees for representational functions.”

time, and issued its demand to bargain over the changes and an order that the Agency cease and desist implementation of the proposed changes until the parties bargaining obligation is met during term negotiations. To date, the Agency has not responded to the April 11 letter.

It is well settled that when parties are bargaining a term agreement and there is a valid collective bargaining agreement in place, the Agency's intent to negotiate a mid-term proposal is a permissive subject. Specifically, the Labor-Relations Statute instructs federal agencies only to "meet and negotiate in good faith [with the union] for the purposes of arriving at a collective bargaining agreement." 5 USC § 7114(a)(4). Thus, neither the union nor the employer may force the other, against its will, to engage in midterm bargaining. Such unrestricted midterm bargaining is arguably at odds with the stated purposes of the Statute.

Violation

By failing to fulfill its contractual obligations and follow federal laws and regulations, the Agency violated, and continues to violate, the following:

- Articles 2 and 3 of the MCBA: requiring the Agency to comply with federal law, and to promote cooperation and efficiency in the labor-management relationship;
- Articles 48 of the MCBA: which describes the procedures for the tracking of official time;
- 5 USC §§ 7114 and 7116: requiring the Agency to consult and negotiate in good faith with the Union;
- And 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 Agency agree to the following:

- To immediately cease and desist from implementing any changes to Article 48 of the MCBA concerning the request, recording and tracking of official time in VATAS;
- To reserve negotiations over the request, recording and tracking of official time to the duration of term negotiations;
- To make whole any impacted bargaining unit employee;
- To fully comply with its contractual obligations under Articles 2, 3 and 48 of the MCBA; and its statutory obligations under Title 5 of the US Code; 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. If you have any questions regarding this National

Grievance, please contact the undersigned. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.

Submitted by,



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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