



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-4/25/19

Date: April 25, 2019

To: Tracy Schulberg
Acting 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: 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 failing to notify and bargain with the Union regarding the IA and PA Disposition Standard Operating Procedure in 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 Agency for failing to notify and bargain with the Union regarding the standard operating procedure covering Individual Authorization and Provider Agreement Disposition in the VHA Office of Community Care (“IA and PA Disposition SOP”). 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, 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 April 17, 2019, the Acting Deputy Under Secretary for Health for Operations and Management distributed a memorandum entitled “Veterans Care Agreements for Dental, Personal

Care Services, and Home Hospice” to all VISN Directors (“DUSHOM Memorandum”). The DUSHOM Memorandum included guidance and instructions regarding the transition from individual authorizations and provider agreements under the Veterans Choice Program to new Veterans Care Agreements as part of the Agency’s implementation of the MISSION Act. It also included several attachments, such as training materials and a new SOP. The IA and PA Disposition SOP constitutes a change in conditions of employment. However, the Agency failed to notify the national Union and provide an opportunity to bargain prior to implementation.

In refusing to notify, consult, and negotiate in good faith with the Union prior to implementing the IA and PA Disposition SOP, 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 IA and PA Disposition SOP, 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.

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;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedy Requested

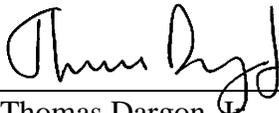
The Union asks that, to remedy the above situation, the VA agree to the following:

- To cease and desist the further implementation of the IA and PA Disposition SOP;
- 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 IA and PA Disposition SOP;

- To make-whole any bargaining unit employee adversely effected by the improper implementation of the IA and PA Disposition SOP;
- 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.



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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