



# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE

NG-4/26/18

**Date:** April 26, 2018

**To:** Kimberly McLeod  
Executive Director  
Department of Veterans Affairs  
Office of Labor-Management Relations  
810 Vermont Avenue, NW  
Washington, DC 20420  
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*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 satisfy obligations regarding the payment of travel expenses for Robert Fetzer

## 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 satisfy obligations regarding the payment of travel expenses for Robert Fetzer. To date, VA has failed to remedy this violation, and as such, continues to violate contract and law.

Specifically, the VA violated Articles 2, 3, 25, 48, and 49 of the MCBA, 5 U.S.C. §7116(a), and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

## STATEMENT OF THE CASE

### **Background**

During his federal service with the Salem VA Medical Center, Robert Fetzer has been working as a union representative for more than 36 years. In this capacity, Mr. Fetzer holds several elected and appointed positions that require frequent, recurring travel. He is Co-Chair of the Joint AFGE/VA National Training and Education Committee, NVAC 4<sup>th</sup> District Representative,

Member of the NVAC Executive Board, Member of the NVAC Legislative Committee, Chairperson for the VISN 6 Negotiation Team, and is a Member of the Joint AFGE/VA National Quality Council. Often, Mr. Fetzer's Agency business travel and Union business travel are adjoining, meaning, for example, that he spends a portion of the travel performing representational duties during representational travel, funded by the Agency, and a separate portion of the travel participating in internal union business meetings or performing other non-Agency reimbursable functions. Therefore, Mr. Fetzer's travel is often costed to one or more sources, including VA Central Office, VISN 6, the Salem VAMC, and the National VA Council.

Due to the complex nature of Mr. Fetzer's travel, which differs greatly from the travel obligations of employees at the Salem VAMC not working in a union capacity, the Parties have followed a past practice for 36 years where Mr. Fetzer coordinated his own travel arrangements and later sought reimbursement from the Agency, if applicable. At no time in the past was Mr. Fetzer required to use E-Gov Travel Service 2 ("ETS2") or any other part of the Concur system.

Beginning in September 2017, Mr. Fetzer began experiencing difficulty obtaining travel authorization and travel reimbursement. This issue was promptly brought to the attention of management officials at the Salem VAMC. After numerous discussions with Jon Leonard, Assistant Chief of Fiscal Department, and Rebecca Stackhouse, Medical Center Director, the Salem VAMC and NVAC came to an understanding on how to move forward and began memorializing their agreement in a Memorandum of Understanding ("MOU"). In summary, under the Parties' agreement in principle, Mr. Fetzer would utilize Concur when strictly on representational travel, funded by the Agency, with the assistance of a management-trained travel preparer, and he would not be required to obtain a government-issued travel card. When the Parties began discussing the issue of travel advances, the negotiations fell apart. An MOU altering the Parties' 36-year past practice was never signed.

An agency is required to fulfill its obligation to bargain in good faith when it changes a condition of employment that was established through past practice. However, on April 2, 2018, Director Stackhouse sent a memorandum to the NVAC President, entitled "Federal Travel Regulations," notifying her that Mr. Fetzer would now be required to use ETS2, Concur, and that he had to obtain a government-issued travel card immediately.

The Federal Travel Regulations ("FTR") apply to "official travel." 41 CFR 300-1.2(a). Travel on official time and travel related to union business are not considered "official travel" because Mr. Fetzer is not conducting government business for his position of record. Therefore, the FTR does not apply. Nonetheless, even if it did apply to Mr. Fetzer's travel, he should not be required to obtain a government-issued travel card because there is good cause for the Agency to grant an exemption under 40 C.F.R. §301-70.701(b) and 5 USC §5701 note. Due to the complex nature and frequent cross-funding of Mr. Fetzer's travel, in addition to the fact that this change in working conditions would impose an unreasonable burden on him, the Agency has no legitimate, non-discriminatory reason to deny the exemption.

In unilaterally implementing a change in the past practice, the Agency committed an unfair labor practice under 5 U.S.C. §7116(a)(1) and (a)(5), and similarly, breached the mid-term bargaining provisions in Article 48. 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. Further, if the Agency insists that Mr. Fetzer's travel constitutes "official travel" and is regulated by the FTR, it has breached Article 25 by not paying him overtime and compensatory time, where applicable. Lastly, should the Agency refuse to grant Mr. Fetzer an exemption under the FTR, even where good cause exists and the exemption is in the interest of the government, it would run afoul of the prohibition on interference and retaliation against union officials contained in Article 49 and 5 U.S.C. §7116.

## **Violation**

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;
- Article 25 of the MCBA: requiring the Agency to pay overtime and compensatory time, where applicable, to employees on "official travel";
- Article 48 of the MCBA: requiring the Agency to fulfil mid-term bargaining obligations;
- Article 49 of the MCBA: requiring the Agency not to intimidate, interfere, or retaliate against union officials;
- 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 return to the status quo ante and honor the Parties' past practice until an alternative agreement is reached through good faith bargaining;
- To fully comply with its contractual obligations under Articles 2, 3, 25, 48, and 49 of the MCBA, as well as its statutory obligations under 5 U.S.C. §7116(a)(1) and (5);
- To make-whole Mr. Fetzer for any backpay owed to him, including 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.



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