

NATIONAL GRIEVANCE

NG-05/13/16

Date: May 13, 2016

To: Kevin Nelson
Labor & Employee Relations Specialist
Department of Veterans Affairs
Veterans Benefits Administration
Office of Human Resources
1800 G Street, NW
Washington, DC 20006

From: Shalonda Miller, Staff Counsel, National Veterans Affairs Council (#53) (NVAC),
American Federation of Government Employees, AFL-CIO (“AFGE”)

Thomas Dargon, Jr., Staff Counsel, National Veterans Affairs Council (#53) (NVAC),
American Federation of Government Employees, AFL-CIO (AFGE)

Subject: National Grievance in the matter of the Department of Veterans Affairs, Veterans Benefits Administration Office of Human Resources, for its refusal to bargain in good faith concerning the impact and implementation of National Transactional Reports (NTRs) affecting 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), American Federation of Government Employees/National Veterans Affairs Council (“the Union”) is filing this National Grievance against you and all other associated VA/VBA officials and/or individuals acting as agents on behalf of the VA/VBA for violations as it relates to the failure to bargain in good faith concerning the impact and implementation of National Transactional Reports (NTRs) affecting conditions of employment.

Specifically, on or about April 15, 2016, the VA/VBA, by and through its representatives and/or agents, notified representatives of the Union that it would not negotiate the impact and implementation of NTRs on bargaining unit employees.

In doing so, the VA/VBA has violated the following provisions: Article 2, Section 1; Article 47, Sections 1 and 2; Article 66, Section 1(C); 5 U.S.C. §7116(a)(5), any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On November 24, 2015, pursuant to Article 47, Sections 1 and 2, the Union's chief negotiator, Dennis Freeman, sent a demand to bargain to Kevin Nelson, chief negotiator for the management of VA/VBA, concerning National Transaction Reports (Possible Surveillance Reports of Employees). That same day, Mr. Nelson acknowledged receipt of the Union's demand to bargain the NTRs, via email, and offered a list of dates on which management would be available to brief the Union's mid-term bargaining team on the implementation of NTRs.


On December 11, 2015, management provided a telephone briefing to the Union's mid-term bargaining team. Management provided and accompanying PowerPoint presentation that stated, in relevant part: "The purpose of the Throughput Transparency Cost (TTC) and Employee Throughput Report (ETR) is to promote efficiency through transparency. The TTC/ETR Report is intended to be used as an analytic tool and is not authorized for use in employee performance monitoring." Relying on the representations made by management during the telephone briefing, the Union submitted its proposed Memorandum of Understanding regarding NTRs (NTR MOU) to management on December 11, 2015. Specifically, as it related to the impact of NTRs on employee performance and conduct (i.e., paragraph 2 of the MOU), the Union proposed the following language: "The TTC/ETR Report is intended to be used as an analytical tool and is not authorized for use in employee performance and conduct monitoring." On January 5, 2016, management provided a counter-proposal to paragraph 2, as follows: "The purpose of the TTC/ETR Report is to be used as an analytic tool and should not be used as the primary source in appraising employee performance or conduct monitoring."

Over the next four months, management and the Union attended in-person meetings, a mediation session, and exchanged a series of proposals and counterproposals concerning the language of the MOU. On April 15, 2016, after more than four months of bargaining, Mr. Nelson informed Mr. Freeman, via email, that it was now management's position that the subject matter in paragraph 2 was already "covered by" Article 66 of the MCBA, and therefore, the Union's proposal regarding paragraph 2 was "non-negotiable and outside the scope of collective bargaining" because it "excessively interferes with management right to correct misconduct or performance based action against employees."

At the beginning of mid-term bargaining on the NTR MOU, management represented to the Union that it would not authorize the use of NTRs for employee performance monitoring. Presently, management has refused to abide by this representation, has unilaterally ceased mid-term negotiations, and has refused to bargain in good faith.

Violation





By refusing to negotiate with the Union concerning the impact and implementation of NTRs on the working conditions of bargaining unit members, the VA/VBA has violated the following provisions of the MCBA:

- Article 2, Section 1 of the MCBA, requiring the VA/VBA to comply with federal statutes;
- Article 47, Sections 1 and 2, requiring the VA/VBA to engage in mid-term bargaining, once initiated by the Union, on matters affecting the working conditions of bargaining unit employees;
- Article 66, Section 1(C) of the MCBA, requiring the VA/VBA to comply with its contractual and statutory obligations to bargain once it decides to modify or change its application of technology.

The VA/VBA has also violated 5 U.S.C. §7116(a)(5), which requires a government agency to bargain in good faith with labor organizations.

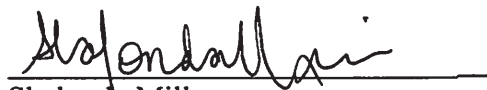
Remedy Requested

The Union asks that, to remedy the above situation, the VA/VBA agrees to the following:

- To return to the *status quo ante* until the parties have had an opportunity to bargain in good faith and execute a memorandum of understanding on the implementation of NTRs;
- To order VA/VBA Districts to cease and desist any use of the NTRs related to employee performance or conduct actions;
- To return to the bargaining table with the Union and negotiate the impact and implementation of NTRs;
- To fully comply with its contractual and statutory obligations under Articles 2, 47, and 66 of the MCBA, as well as 5 U.S.C. §7116(a)(5);
- To agree to any and all other remedies appropriate in this manner.

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 feel free to contact AFGE General Counsel's Office at 202-639-6424.



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