



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE NG-5/16/19

Date: May 16, 2019

To: Tracy Schulberg
Acting Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
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 repudiating its mid-term bargaining obligations

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 repudiating mid-term bargaining obligations. To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the VA violated Articles 2, 3, 47, and the Duration of Agreement 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 December 15, 2017, the Department of Veterans Affairs (“the Agency”) notified the Union of its intention to reopen and renegotiate the MCBA. Pursuant to the Duration of Agreement provision, the MCBA is automatically extended until a new term agreement is negotiated. On April 2, 2019, the Parties signed a Memorandum of Understanding governing the ground rules for term bargaining, currently scheduled to commence on May 27, 2019.

On May 2, 2019, Donald Stephen, Director of Training and Intervention at the VA Office of Labor-Management Relations sent an email to the field entitled “VA/AFGE Ground Rules and Mid-Term Bargaining.” It stated, in relevant part, “As some of you may be aware, the Department and AFGE have completed negotiations over ground rules pertaining to the reopening of the 2011 VA-AFGE Master Agreement. The ground rules were signed by the parties on April 2, 2019. . . . Please note that all local or intermediate (VISN Level) mid-term negotiations are prohibited for the duration of the VA-AFGE Term Negotiations.” Thereafter, pursuant to this directive, local Agency officials refused to engage in mid-term bargaining with local AFGE representatives.

On May 14, 2019, Alma L. Lee, the Union’s Chief Negotiator, contacted Dr. William Hervey, the Agency’s Chief Negotiator, in attempt to resolve this dispute but was unable to do so.

Article 47 of the MCBA governs the Parties’ mid-term bargaining obligations at the local, intermediate, and national level.¹ By instructing Agency officials not to comply with mid-term bargaining obligations, and instead, to refuse to engage in mid-term bargaining until term bargaining is complete, the Agency repudiated its contractual responsibilities. This clear and patent repudiation goes to the heart of the Parties’ agreement. It is an unfair labor practice, in violation of 5 U.S.C. §§7116(a)(1) and (5) of the Statute, for an agency to repudiate a negotiated agreement. See, e.g., United States Department of Justice, Federal Bureau of Prisons and AFGE Local 3935, 68 FLRA 125 (2015). Therefore, the Agency has committed an unfair labor practice. Further, the Agency has violated its statutory bargaining obligations under the Statute.

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. In repudiating its mid-term bargaining obligations, the Agency renounced its commitments and necessitated further collective bargaining disputes.

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 of the MCBA: requiring the Agency to comply with agreed-upon procedures for mid-term bargaining;
- 5 U.S.C. §§7116(a)(1) and (a)(5);
- Duration of Agreement of the MCBA: requiring the Agency to comply with the MCBA until a new term agreement is negotiated;

¹ Aside from the mid-term bargaining procedures outlined in Article 47, the MCBA also includes several, issue-specific subjects that are appropriate for local bargaining, including those found in Articles 1, 4, 6, 7, 10, 12, 13, 14, 16, 18, 20, 21, 23, 25, 26, 29, 30, 32, 33, 35, 37, 38, 46, 47, 48, 49, 50, 51, 61, 62, 64, and 66.

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

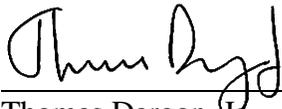
Remedy Requested

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

- To fully comply with its contractual obligations under Articles 2, 3, 47, and the Duration of Agreement of the MCBA and its statutory obligations under 5 U.S.C. §7116(a);
- To rescind the May 2, 2019 directive and instruct Agency officials to comply with the mid-term bargaining obligations in the MCBA;
- To return to the *status quo ante* and make-whole any AFGE Local or bargaining unit employee affected by the Agency's repudiation of its mid-term bargaining obligations;
- To distribute an electronic notice posting to all bargaining unit employees concerning the Agency's violations of the Statute;
- 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.



Thomas Dargon, Jr.
Staff Counsel, National VA Council
Office of the General Counsel
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
Tel: 202-639-6424
Fax: 202-379-2928
thomas.dargon@afge.org

cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC