



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-7/11/17

Date: July 11, 2017

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: 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 Adverse Actions Report published by the Office of Accountability and Whistleblower Protection and for Privacy Act violations.

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 Adverse Actions Report published by the Office of Accountability and Whistleblower Protection (“VA-OAWP”) and for violations of the Privacy Act. To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA, federal law, and Agency policy.

Specifically, the VA violated Articles 2, 3, 17, 24, and 47 of the MCBA, 5 U.S.C. §7116(a), 5 U.S.C. §552a, VA Handbook 6300.5, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On July 7, 2017, the Agency issued a VA News Release entitled “VA Expands Transparency, Accountability Efforts.” There, the Agency announced that it was “taking a further step on transparency and accountability as a follow-on to the VA Accountability and Whistleblower Protection Act signed by the [P]resident less than two weeks ago” and that it would be “making public a list of adverse employee actions taken since Jan. 20” on www.va.gov/accountability. This list, the “Adverse

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Actions Report,” was published on the VA-OAWP website, a public domain, and includes information on removals, demotions, and suspensions of more than 14 days made effective from January 20, 2017 to July 3, 2017.¹

The Agency failed to notify and provide an opportunity to bargain to the Union regarding a substantively negotiable issue, and instead, unilaterally implemented the Adverse Actions Report on or about July 7, 2017. In refusing to notify, consult, and negotiate in good faith with the Union prior to publishing the Adverse Actions Report, the Agency committed an unfair labor practice under 5 U.S.C. §§7116(a)(1) and (a)(5). Further, the Agency violated Article 47, Section 2, which sets forth the Parties’ responsibilities regarding mid-term bargaining at the national level.

The Agency published the Adverse Actions Report in violation of the Privacy Act, 5 U.S.C. §552a, and VA Handbook 6300.5 (Procedures for Establishing and Managing Privacy Act System of Records). Despite the Agency’s statement in the July 7, 2017 VA News Release that “[f]or privacy reasons, . . . the list will not include employee names,” the information contained in the Adverse Actions Report is sufficiently detailed to allow an individual to discern the identity of a disciplined employee, without their consent, thus violating the privacy rights of bargaining unit employees. The Agency created and published the Adverse Actions Report on its own accord, without any corresponding request for information, by compiling information found within systems of records, such as “Agency-Initiated Personnel Actions (Title 38)—VA (102VA05).” Disclosure of this information does not fall within any of the routine uses listed in the relevant SORNs. Lastly, disclosure is not permitted under any exception in 5 U.S.C. §552a(b), and as an unwarranted invasion of personal privacy, is also prohibited under the Freedom of Information Act.

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 and 5 U.S.C. §552a, 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 committing these violations of contract, federal law, and Department-wide policy, the Agency renounced its commitments under Article 3 of the MCBA 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;
- Article 17 of the MCBA: requiring the Agency to protect employees’ privacy rights;
- Article 24 of the MCBA: requiring the Agency to comply with federal law, regulation, Department policy, and the MCBA in the collection, maintenance, and retention of official records;

¹ For each instance of reported discipline, the Adverse Actions Report includes pieces of information: “Org/VISN,” “Position,” “Action Taken,” “Effective Date.”

- Article 47 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;
- The Privacy Act of 1974 and VA Handbook 6300.5: requiring the Agency to satisfy certain requirements in establishing, maintaining, and disseminating information within a system of records;
- 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 immediately remove the Adverse Actions Report from the VA-OAWP website;
- To cease and desist the further collection or dissemination of information pertaining to the Adverse Actions Report;
- To fully comply with its contractual and statutory obligations;
- To make-whole any bargaining unit employee injured by the Agency's unlawful intrusion of personal privacy;
- To pay reasonable attorney's fees and litigation costs under 5 U.S.C. §552a(g);
- 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 at AFGE Office of the General Counsel.



Thomas Dargon, Jr.
Staff Counsel, National VA Council
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