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7S/L446/00359839

NATIONAL GRIEVANCE

NG-07/13/2016

**Date:** July 13, 2016

**To:** Larry Bennett  
Director, Labor-Management Relations  
Office of Labor-Management Relations  
Department of Veterans Affairs  
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*Sent via electronic mail*

**From:** Shalonda Miller, 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 for its 1) failure to provide the Union advance notice of a formal administrative investigation involving bargaining unit employees; 2) failure to inform employees of their right to Union representation prior to questioning them during an administrative investigation; and 3) failure to recognize the Union as the exclusive representative by directly dealing with bargaining unit employees concerning 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 Department of Veterans Affairs (“Agency”) officials and/or individuals acting as agents on behalf of the Agency, for violations as it relates to its 1) failure to provide the Union advance notice of a formal administrative investigation involving bargaining unit employees; 2) failure to



inform employees of their right to Union representation prior to questioning them during an administrative investigation; and 3) failure to recognize the Union as the exclusive representative by directly dealing with bargaining unit employees concerning conditions of employment.

Specifically, on or about May 3, 2016, and continuing to date, the Agency, by and through its representatives and/or agents:

- (1) Failed to notify bargaining unit employees of their right to be represented by the Union while being questioned during a formal investigation;
- (2) Failed to give the Union an opportunity to be present during a formal examination of a bargaining unit employee;
- (3) Failed to recognize that the Union, as the exclusive representative of bargaining unit employees, has the right to speak for and to bargain on behalf of the employees it represents;
- (4) Bypassed the Union when it communicated directly with bargaining unit employees through written questionnaires and meetings regarding conditions of employment; and
- (5) Failed to inform the Union in advance of a formal administrative investigation where bargaining unit employees were required to provide a written statement.

In doing so, the Agency has violated the following laws and provisions:

- (1) Article 1, Sections 2 and 3 of the MCBA;
- (2) Article 2 of the MCBA;
- (3) Article 22, Section 2 of the MCBA;
- (4) Article 49, Sections 3 and 8 of the MCBA;
- (5) Sections 7114(a)(2) and 7116(a)(1), (5) and (8) of the Federal Service Labor-Management Relations Statute (the “Statute”); and
- (6) any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

## STATEMENT OF THE CASE

### **I. Background**

Beginning on or about May 3, 2016, and continuing to date, the Agency, by and through its agents, solicited select unit employees for their input regarding patient care, claims processing, and other conditions of employment. The Agency distributed questionnaires and held formal discussions with unit employees without giving advance notice to the Union, in violation of Article 49, Section 3 of the MCBA. The Agency further failed to notify employees of their right to have a Union representative present prior to questioning them. Moreover, the distribution of questionnaires and conducting formal discussions with bargaining unit employees constitutes a bypass of the Agency's obligation to deal with the Union as the exclusive representative of bargaining unit employees. At this time, the Union is aware that the following locals were affected by the Agency's violation of the MCBA: Local 446 (Asheville, NC), Local 1738 (Salisbury, NC) and Local 2328 (Hampton, VA), but reserves the right to supplement the list until such time that this grievance is settled or resolved.

More specifically, select groups of bargaining unit employees were notified that mandatory surveys/questionnaires were being distributed by the Agency's Office of the Inspector General ("OIG"). Employees were required to submit answers via computer stations maintained by the Agency, and were required to include their electronic signature, workstation location and contact information in their responses. Random employees were thereafter required to participate in in-person interviews with Agency officials based on their survey answers. These surveys and in-person interviews went well beyond information gathering in that they solicited employees' views with respect to the improvement of veterans services and claims processing. At no point were bargaining unit employees informed of their right to have a Union official present for questioning; nor did the Agency provide advance notice to the Union of its intent to conduct formal discussions with bargaining unit employees. The Agency further failed to provide employees with a transcript of his/her personal statement as required by the MCBA.

It is well settled that inspectors general act as components of the agencies they serve when they conduct investigations. NASA v. FLRA, 527 U.S. 229, 240 (1999). In NASA, the Supreme Court held that OIG's investigative authority "is performed with regard to, and on behalf of, the particular agency in which it is stationed." Id. at 240. Therefore, employees being interrogated by OIG have the same right to union representation that is provided to employees being questioned by supervisors and managers. Id. at 237. The Court further held that an agency may be held responsible for the actions of investigators employed by its OIG when examining the agency's bargaining unit employees. Id. at 240.

Bypassing the Union and directly dealing with bargaining unit employees violates §7116(a)(1) of the Statute, because it interferes with the Union's rights to act for and represent all employees in the bargaining unit of the Statute. The threshold issue in determining whether a bypass has occurred rests on whether the Agency's direct dealings with employees are "likely to erode the Union's position as exclusive representative." AFGE, National Council of HUD Locals 222, 54 FLRA 1267, 1280 (1998). Here, the Agency demeaned the Union's representational status when it surveyed bargaining unit employees about conditions of employment without first getting an agreement the procedure by the Union.

## **II. Violation**

The Agency has violated the following provisions of the MCBA:

Article 1, Sections 2 and 3, recognizing AFGE as the exclusive representative of bargaining unit employees and prohibiting the Agency from bypassing the Union by directly dealing with unit employees concerning conditions of employment.

Article 2, which requires the Agency to comply with federal statutes and the Master Agreement;

Article 22, Section 2, which requires the Agency to inform the Union of formal administrative investigations of bargaining unit employees, and requires the Agency to follow certain procedures to preserve an employee's rights, including the right to be provided with a transcript of his/her statement given during the investigation;

Article 49, Sections 3, by failing to provide the Union reasonable advance notice of, and give the opportunity to be present and participate in, any formal discussion between with bargaining unit employees where questionnaires regarding conditions of employment were distributed; and

Article 49, Section 8, by directly communicating with bargaining unit employees through surveys and questionnaires without prior notification to the Union;

Sections 7114(a)(2)(A) and 7116(a)(1), (5) and (8) of the Statute which grant the Union a right to representation during formal discussions between one or more representatives of the Agency and one or more unit employees concerning conditions of employment; and states that an Agency will not interfere with, restrain, or coerce employees in the exercise of their statutory rights; and

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

## **III. Remedy Requested**

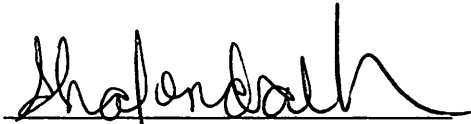
The Union asks that, to remedy the above situation, the Agency agrees to the following:

- (1) To provide the Union advance notice of any formal administrative investigation involving bargaining unit employees;
- (2) To cease and desist bypassing the Union by communicating directly with bargaining unit employees regarding conditions of employment; or otherwise interfering with, coercing, or restraining employees in exercising their rights.

- (3) To cease and desist requiring bargaining unit employees to participate in surveys/questionnaires and formal discussions without allowing active participation of a Union representative;
- (4) To fully comply with its contractual and statutory obligations under Articles 1, 2, 22, and 49 of the MCBA and federal law; and
- (5) To agree to any and all other remedies appropriate in this manner.

#### **IV. 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 me at 202-639-6424.



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