



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-7/25/17

Date: July 25, 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: Michael A. Gillman, 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 meet its contractual bargaining obligation concerning changes to VSR performance standards, for failing to provide a written explanation of all aspects of the revised performance standards, and for failing to provide a 90-day acclimation period after changes to performance standards

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”), the 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 provide reasonable notice to the Union of the Department’s changes to performance standards for Veterans Service Representatives (“VSRs”) represented by the Union in violation of the MCBA, for failing to fully communicate revised performance standards to bargaining unit employees in violation of the MCBA, and for failing to provide these employees with a 90-day acclimation period in violation of an MOU executed by the parties on April 6, 2017.

Specifically, the Agency violated Article 27, Sections 5(A) and (I), Article 47, Section 2 of the MCBA, and Paragraph 24 of the April 6, 2017 MOU entered into by the Agency and the Union.



STATEMENT OF THE CASE

The parties' MCBA states, "When the Department mandates national performance standards, all bargaining obligations with the Union shall be met at the national level." MCBA, Article 27, Section 5(I). Pursuant to this provision, when the Agency revised national performance standards for VSRs, the parties entered into a Memorandum of Understanding entitled "Veterans Service Representatives Performance Standards" (the "MOU"), dated April 6, 2017. The MOU covered topics related to the impact and implementation of the national performance standards. In addition to the MCBA's requirement that the Agency notify the Union when there are any changes to performance standards, (Article 27, Section 5E), the MOU explicitly states, that "[f]or the purpose of this agreement, management shall not issue a Performance Improvement Plan (PIP) for a period of 90 days subsequent to implementation of the performance standards whenever new/revised standards are issued to allow for continued monitoring and assessment." MOU at paragraph 24.

Two months after the signing of the MOU, the Agency again revised the performance standards that were issued in conjunction with the MOU. On June 12, 2017, prior to notifying the Mid-term Bargaining Committee (MTBC), the Agency began distributing revised performance standards to bargaining unit employees and soliciting the signatures of these employees on the bottom of the revised standards. In the email to bargaining unit employees, the Agency indicated that it would be providing more information in the future about which kinds of transactions receive credit and which kinds do not for the purposes of the employees' performance standards.

Two weeks later, the Agency announced additional changes to the performance standards relating to how many distinct transactions would be required to meet the fully successful and exceptional levels. Local managers were given instructions to solicit the signatures of bargaining unit employees upon their receipt of the revised standards.¹ This change was announced to the MTBC as a *fait accompli* on the same day (June 27) the standards were distributed to local managers who in turn disseminated the revised standards to the bargaining unit. In the same June 27 email to the MTBC, the Agency unilaterally scheduled a briefing on June 28, 2017. On the hastily scheduled June 28, 2017 briefing call, Willie Clark, Deputy Undersecretary for the Office of Field Operations, stated that the changes to the performance standards would take effect upon the close of business on June 30, 2017; that, contrary to the parties' MOU, there would be a 30-day acclimation period during which the Agency would not put employees on performance improvement plans; and, that the call was "not a negotiation." The Agency's June 30, 2017 effective date rendered the Union's request for bargaining futile as none of the contractual requirements could be met in the short timeframe.

Because the change at issue relates to VSR *national* performance standards, the bargaining obligation (including notice requirements) is at the national level, which is addressed in Article 47 of the MCBA. See MCBA, Article 27, Section 5(I) ("When the Department mandates national performance standards, all bargaining obligations with the Union shall be met at the national level."). Article 47 requires proposed changes to working conditions to be forwarded to the NVAC President or her designee (in this case the MTBC) together with all necessary and relevant

¹ A copy of the revised standards that were provided to the MTBC and the bargaining unit has been included with this grievance for reference.

documents relied upon by the Agency. The union has 20 workdays to issue a demand to bargain upon receipt of proper notice from the Agency. If the union demands to bargain, the Agency then has 20 workdays to provide a briefing on the proposed changes. After the briefing, the union has 20 workdays to submit proposals. From there, traditional collective bargaining commences, beginning with telephone discussions and proceeding to face-to-face meetings if agreement on the proposed changes cannot be reached.

Here, the Agency began soliciting signatures from bargaining unit employees prior to even briefing the MTBC. Additionally, the Agency's 3-day notice period prior to implementation is unreasonable and prevents the Union from exercising its contractual rights under the procedures outlined in the MCBA. Furthermore, on the June 28 briefing call, Willie Clark explained that his office had data that was used to explain the reasoning behind the revision to the performance standard. To date, this data has not been provided to the union as required by Article 47 of the MCBA.

The MCBA also provides that when bargaining unit employees are given new or revised performance standards, "[a]ll aspects of the performance plan, including numerical standards, measurement indicators, priorities, and weightings, if applicable, will be communicated in writing to the affected employees at the time the employees receive his/her performance elements and standards." MCBA, Article 27, Section 5(A). The one-page document given to bargaining unit employees fails to fully describe all aspects of the performance plan as required by the MCBA. To date the Agency has not provided any additional explanation of this critical aspect of the performance standards.

Violations

By failing to fulfill its contractual obligations, the VA violated, and continues to violate the following:

- Article 27, Section 5(I) of the MCBA: requiring notice to the Union, at the national level, of any changes in performance standards;
- Article 27, Section 5(A) of the MCBA: requiring all aspects of a performance standard to be explained in writing to bargaining unit employees at the time the employees receive their performance elements and standards;
- Article 47, Section 2 of the MCBA: detailing the procedures for national level bargaining;
- Paragraph 24 of the April 6, 2017 MOU entitled "Veterans Service Representatives Performance Standards": requiring a 90-day acclimation period during which no PIPs will issue after a change in performance standard has been implemented.
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedies Requested

To remedy the above referenced violations, the Union asks that the Agency agree to the following:

- Cease and desist from implementing the changes to VSR performance standards mentioned above;
- To return to the status quo ante until the Agency has provided proper notice to the Union;
- To cease and desist from any adverse employment action, any adverse change in conditions of employment for bargaining unit employees, and any PIP of a bargaining unit employee premised on deficient performance under the revised performance standards;
- To make whole any bargaining unit employee who suffers an adverse employment action premised on deficient performance under the revised performance standards;
- To fully comply with its contractual obligations under the MCBA and the applicable MOU;
- To fully comply with all applicable federal laws, rules, and regulations; and
- To agree to any and all other remedies appropriate in this matter.

Time Frame and Contact

This is a National Grievance; 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 the undersigned at the AFGE General Counsel's Office.



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

**VSR Performance Standards
Section C - Changes to Performance Plan**

Element Title: ELEMENT 3 – OUTPUT (Critical)

Performance Standard: The changes to this performance element are solely focused in the Fully Successful and Exceptional Level tables referenced below. All other components of Element 3 – Output in the VSR Performance Standards remain unchanged.

Fully Successful and Exceptional Levels

Rating Development	Fully Successful	Exceptional
GS-7 / <12 months	86	107
GS-9 / 12-24 months	104	125
GS-10 / >24 months	109	128
GS-11	113	138

Rating Awd / Auth	Fully Successful	Exceptional
GS-7 / <12 months	81	99
GS-9 / 12-24 months	104	129
GS-10 / >24 months	115	137
GS-11	140	171

Non Rating	Fully Successful	Exceptional
GS-7 / <12 months	65	108
GS-9 / 12-24 months	105	157
GS-10 / >24 months	112	146
GS-11	140	187

Appeals VSR	Fully Successful	Exceptional
GS-7 / <12 months	64	96
GS-9 / 12-24 months	80	119
GS-10 / >24 months	83	120
GS-11	86	126

SIGNATURE OF RATER	DATE
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SIGNATURE OF EMPLOYEE	DATE
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