



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-07/06/18

Date: July 6, 2018

To: Kimberly McLeod
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 failure to respond to 7114(b)(4) information request regarding the VA All Employee Survey

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 persons acting as agents on behalf of the Agency for its unlawful refusal to provide information requested by the Union, specifically text comments of bargaining unit employees provided in response to the 2017 VA All Employee Survey. To date, the VA has failed to remedy this violation and therefore continues to violate the MCBA and federal law.

Specifically, the VA has violated 5 U.S.C. §7114(b)(4), 5 U.S.C. §7116(a)(1), (5), and (8), Article 2 of the MCBA, and Article 49, Sections 5 and 8 of the MCBA, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On April 24, 2018, the Union sent a letter to Kimberly McLeod, Executive Director of the VA Office of Labor-Management Relations, seeking “copies of all open text comments obtained from the 2017 All Employee Survey (AES) obtained between August 7 and August 28, 2017,



pursuant to the prompt ‘please share specific suggestions for improving your workplace.’” A copy of this April 24, 2018 request for information has been included with this grievance as Exhibit A.

On May 18, Richard Watkins on behalf of the Agency responded to the Union’s request with the following objections:

- 1) Agency needs further explanation as to how text responses from employees who are not in the Union’s bargaining unit would necessary;
- 2) Some of the text comments mention the names of other employees who are not in the bargaining unit; and
- 3) The text comments sought were already provided to AFGE Locals by the Agency.

A copy of this response has been included with this grievance as Exhibit B.

By emails dated May 21 and May 23, 2018, the Union responded to the Agency’s objections by clarifying that the Union is only seeking the text comments from employees in the AFGE bargaining unit. The Union further explained that the “already been provided” (see #3 above) excuse is not a valid anti-disclosure interest that can validly excuse non-compliance with 5 U.S.C. §7114(b)(4). A copy of this correspondence has been included with this grievance as Exhibit C.

On June 7, 2018 the Agency reiterated its position that it would not provide the text comments to the Union because doing so would violate employees’ rights to privacy and redacting the names that are mentioned in these comments would be too burdensome because the Agency is busy working on the 2018 All Employee Survey. A copy of the Agency’s June 7, 2018 letter has been included with this grievance as Exhibit D.

The Union files this grievance in response to the Agency June 7, 2018 refusal to provide requested information.

Violation

The Agency’s refusal to provide the requested information violates Section 7114(b)(4) of the Federal Service Labor-Management Relations Statute (5 U.S.C. §7114(b)(4)). That section requires the Agency to provide to the Union information, to the extent not prohibited by law, that is (1) normally maintained by the agency in the regular course of business; (2) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and (3) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining. As explained to the Agency in the attached correspondence, the objections raised do not provide a valid defense to the production of the information requested. A failure to provide information in accordance with 5 U.S.C. §7114(b)(4) is an unfair labor practice under 5 U.S.C. §7116(a)(1), (5), and (8). *See e.g. INS v. AFGE, National Border Patrol Council*, 40 FLRA 792, (“Therefore, we find that the Respondent was required, by section 7114(b)(4) of the Statute, to

supply the requested information to the Union and its failure to do so violated section 7116(a)(1), (5) and (8) of the Statute, as alleged.”)

The Master Agreement contains a parallel provision, at Article 49, Section 5, which specifically incorporates the Agency’s duty to provide this type of information to the Union on request, within a reasonable amount of time and at no cost to the Union. The Agency’s failure to do so has thus also violated Article 49, Section 5 of the Master Agreement. Applicable federal statutory requirements are also incorporated by reference in Article 2, Section 1 of the Master Agreement.

Even if the information sought need not be produced by the Agency according to §7114(b)(4), the Agency is under a separate and independent obligation to provide the Union with the results of a survey of bargaining unit employees. The Master Agreement specifically requires that the Agency, when conducting a survey such as the one at issue here, must share the results of the survey with the Union. *See* MCBA Article 49, Section 8. The Agency provided the Union with a power point presentation that says what the results of the survey were but has utterly failed to provide the Union with the *actual results* of the survey, in the form of the text comments sought by the Union’s information request.

In sum, by its refusal to provide this information to the Union, the Agency has violated and continues to violate the following:

- 5 U.S.C. §7114(b)(4): requiring the Agency to provide certain information to the Union upon request;
- 5 U.S.C. §7114(a)(1): making it an unfair labor practice to interfere with, restrain, or coerce any employee in the exercise by the employee of the right to information under §7114(b)(4);
- 5 U.S.C. §7114(a)(5): making it an unfair labor practice to refuse to consult or negotiate in good faith with a labor organization as required by 5 U.S.C. Chapter 71;
- 5 U.S.C. §7114(a)(8): making it an unfair labor practice to fail or refuse to comply with any provision of 5 U.S.C. Chapter 71, including the requirement to provide information to the Union under §7114(b)(4);
- Article 49, Section 5 of the Master Agreement: incorporating the statutory requirement to provide such information upon request;
- Article 49, Section 8 of the Master Agreement: requiring the Agency to provide the Union with the results of surveys of bargaining unit employees regarding working conditions;
- Article 2, Section 1 of the Master Agreement: requiring the Agency to comply with all applicable federal statutes and regulations; and
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedy Requested

- To immediately provide the Union with the information requested in its April 24, 2018 request as clarified in subsequent correspondence between the parties;
- To cease and desist further violation of the Master Agreement and law;
- To post a notice in all VA locations where bargaining unit employees are present that the Agency will refrain from such further violations of the Master Agreement and law; and
- 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.



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