



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE NG-8/10/18

Date: August 10, 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: 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 the local grievance process set forth in Article 43 of the 2011 Master Agreement

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 the local grievance process set forth in Article 43 of the 2011 Master Agreement. 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, and 43 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 or about July 17, 2018, the Department of Veterans Affairs (“the Agency”) notified the Union of its decision to unilaterally implement Executive Order 13837, “Ensuring Transparency, Accountability and Efficiency in Taxpayer Funded Union Time Use” and immediately “terminate contractual provisions” in fifteen articles of the MCBA. That same day, July 17, 2018, the Acting Chief of Staff published a Memorandum instructing Agency officials to implement the “mandates required by EO 13837.”

The Agency's July 17, 2018 implementation of EO 13837 is being challenged at the national level as violative of the MCBA, the Federal Service Labor Management Relations Statute, and EO 13837 itself. In addition to challenges at the national level, numerous AFGE Locals have filed local grievances challenging the Agency's implementation of EO 13837 as violative of local supplemental agreements, local memoranda of understanding, and local past practice. Upon receipt, local Agency officials have refused to participate in the local grievance process outlined in Article 43 of the MCBA. Instead, they have been instructed that "any matter" related to the July 17, 2018 notification or official time must be handled at the national level. Management officials refuse to meet face-to-face with local union officials to discuss the local grievance, as required by Article 43, Section 7(A), or to render a written decision, as required by Article 43, Section 7(B).

On August 3, 2018, the Office of the Deputy Under Secretary for Operations and Management published a Memorandum to Agency representatives in VACO, VISNs, the Office of Labor-Management Relations, and Workforce Management & Consulting instructing local officials to forward "a grievance or unfair labor practice regarding the implementation notice of EO 13837 or any matter related to the notice and official time" to a "Point of Contact" in VHA, VBA, or NCA. The Agency made no attempt to discuss the matter with the Union prior to publishing the Memorandum and instructing local officials to disregard Article 43, Section 7.

As required by 5 U.S.C. §7121(a), the Parties agreed to a process for the settlement of grievances. Article 43 sets forth a comprehensive scheme that includes one process for local grievances and another for national level grievances. By instructing local officials to disregard the requirements of Article 43, Section 7, and instead, to "forward" all local grievances concerning the July 17, 2018 implementation or official time to a national point of contact in VHA, VBA, or NCA, the Agency has 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. United States Department of Justice, Federal Bureau of Prisons and AFGE Local 3935, 68 FLRA 125 (2015). Therefore, in repudiating Article 43, Section 7, the Agency has committed an unfair labor practice.

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 Article 43, Section 7, 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 43 of the MCBA: requiring the Agency to comply with agreed-upon procedures processing local grievances at the local level;
- 5 U.S.C. §§7116(a)(1) and (a)(5);
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

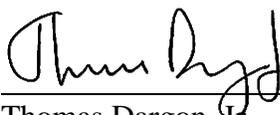
Remedy Requested

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, 43 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a);
- To rescind the relevant part of the August 3, 2018 DUSHOM Memorandum and instruct local Agency officials to comply with Article 43, Section 7 of the MCBA;
- To agree that no Agency official will be permitted to raise a procedural arbitrability defense for any local grievance “forwarded” to a national point of contact in accordance with the August 3, 2018 DUSHOM Memorandum;
- 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.



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