



# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE

NG-8/20/18

**Date:** August 20, 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](mailto: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 timely and fully implement revisions to VA Handbook 5011 regarding physician leave policy

## 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 timely and fully implement revisions in VA Handbook 5011 regarding physician leave policy. To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA, VA policy, and federal law.

Specifically, VA violated Articles 2, 3, 47, and 49 of the MCBA, VA Handbook 5011/32, 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 August 15, 2017, the Department of Veterans Affairs (“the Agency”) notified the Union of its intention to revise VA Handbook 5011 (Hours of Duty/Leave) in order to make changes to variable work schedules and leave policy for physicians. During its briefing presentation to the Union, the Agency explained that it would reduce the “minimum charge” for

physician annual leave from “one calendar day” to “one hour and multiples thereof.” That change was memorialized in the draft policy, see Part III, Chapter 3, Section 4(b)(4)(a), which was provided to the Union’s Mid-Term Bargaining Committee for review and comment. The Parties executed a Memorandum of Understanding on September 26, 2017, which required the Agency, in relevant part, to make the revisions to VA Handbook 5011 available on the VA intranet website and to provide copies of the MOU to AFGE Local Presidents.

On November 22, 2017, the Agency implemented VA Handbook 5011/30 (“Change 30”). Change 30 included some, but not all, of the policy revisions previously provided to the Union during mid-term bargaining. Notably, Change 30 did not include the revision reducing the minimum charge of physician annual leave to one hour. On March 27, 2018, the Agency implemented VA Handbook 5011/31 (“Change 31”). Likewise, Change 31 did not include the revision reducing the minimum charge of physician annual leave to one hour. On July 26, 2018, the Agency implemented VA Handbook 5011/32 (“Change 32”). Change 32 included the revision reducing the minimum charge of physician annual leave to one hour, which had been agreed to in the September 26, 2017 MOU. See Part III, Chapter 3, Section 4(b)(4)(a) at III-48. The Preamble to Change 32 states that “[t]his handbook sets forth mandatory procedures.” After the Agency’s formal concurrence process, Change 32 became VA-wide policy. After the implementation of Change 32, which took place ten months after the MOU was signed, the Agency published a Human Resources Management Letter instructing the field not to comply with the requirements of Part III, Chapter 3, Section 4(b)(4)(a). Accordingly, contrary to VA Handbook 5011/32, VA physicians have been forced to take one full calendar day for each instance of annual leave.

VA Handbooks constitute Agency-wide policy. Human Resource Management Letters do not override Agency-wide policy. In failing to comply with VA Handbook 5011/32, Part III, Chapter 3, Section 4(b)(4)(a), the Agency has violated its own policy.

In refusing to notify, consult, and negotiate in good faith with the Union prior to initiating a change in conditions of employment for VA physicians, namely, in reverting back to the “one calendar day” rule for physician annual leave, the Agency committed an unfair labor practice under 5 U.S.C. §7116(a)(1) and (a)(5). 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. By failing to notify, consult, and negotiate with the Union prior to deciding not to fully comply with Change 32, the Agency renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes. Finally, the Agency violated Article 47, Section 2, and Article 49, Section 4, which set forth the Parties’ responsibilities regarding mid-term bargaining at the national level.

## **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 47 and 49 of the MCBA: requiring the Agency to comply with agreed-upon procedures for mid-term bargaining at the national level;
- VA Handbook 5011/32: permitting physicians to take annual leave in one-hour increments;
- 5 U.S.C. §7116(a)(1) and (a)(5): requiring the Agency to consult and negotiate in good faith with the Union;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

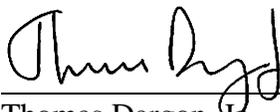
### **Remedy Requested**

The Union asks that, to remedy the above situation, the VA agree to the following:

- To fully comply with its contractual obligations under Articles 2, 3, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a);
- To fully comply with VA Handbook 5011/32;
- 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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