



# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE

NG-8/28/19

**Date:** August 28, 2019

**To:** Tracy Schulberg  
Acting Executive Director  
U.S. Department of Veterans Affairs  
Office of Labor-Management Relations  
810 Vermont Avenue, NW  
Washington, DC 20420  
[tracy.schulberg@va.gov](mailto:tracy.schulberg@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 violating the ground rules and failing to bargain in good faith during term negotiations

## 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 Department for violating the ground rules and failing to bargain in good faith during term negotiations. To date, the VA has failed to remedy these violations, and as such, continues to violate the MCBA and federal law.

Specifically, the VA violated Articles 2 and 49 of the MCBA, the April 2, 2019 Ground Rules, 5 U.S.C. §7114(b)(4), 5 U.S.C. §7116(a), and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

## STATEMENT OF THE CASE

### Background

On December 15, 2017, the Department notified the Union of its intention to renegotiate the MCBA. On April 2, 2019, the Parties executed a Ground Rules Memorandum of Understanding (“the Ground Rules”), which outline the responsibilities of the Parties and establish mandatory procedures governing negotiations for the successor term agreement.

Section VI(A) of the Ground Rules requires that the Department pay the “travel and per diem expenses for ten (10) Union Master Bargaining Team Members or their alternates.” However, from the start, the Department has failed to issue travel orders and authorizations in a timely manner. As a result, several of the Union’s representatives have, at various times, been unable to secure government-funded travel and have needed to make travel arrangements with personal funds. Even after alerting the Department to these recurring issues and requesting reimbursement, several Union representatives have not been made whole. The bargaining schedule is fixed by the Ground Rules, and therefore, the Department should be able to provide travel orders to the Union with several weeks’ notice. Bargaining team members should not be scrambling to make travel arrangements in the days prior to each bargaining session. The Department’s failure to comply with the Ground Rules in this regard has caused needless disputes in the term bargaining.

As for its actions at the table, the Department continues to violate agreed-upon procedures for exchanging bargaining proposals. Section VII of the Ground Rules establishes a comprehensive, color-coded formatting scheme that allows the Parties to track the bargaining history and see, for example, when existing contract language is struck, when new language is proposed, or when the Parties come to agreement on disputed language. Despite these clear procedures, the Department often provides its proposals without the requisite formatting needed to capture the bargaining history. When asked on August 21, 2019 to provide a corrected version of its latest proposals on Article 35 (Time and Leave) so that the Union could review and respond, the Department plainly refused. On August 27, 2019, the Department refused to follow established procedures and execute agreements on the portions of Article 35 that were agreed to by the Parties in sidebar negotiations. That same day, the Agency provided a proposal to the Union on Article 35 that eliminated a sub-section of existing contract language without using the striking notation required by the Ground Rules. These actions violate the Ground Rules, delay the process, and necessitate needless controversy.

Further, the Department repeatedly uses caucus time to avoid face-to-face bargaining with the Union. The Chief Negotiator fails to provide “a reasonable estimate on the anticipated length of the caucus,” as required by Section VI(E) of the Ground Rules, and the Department often spends four to six hours per day in caucus. When the Department does elect to send representatives to the table to discuss proposals, many of the Union’s questions go unanswered or receive responses such as, “it is what it is” or “it speaks for itself.” This behavior does not demonstrate a sincere resolve to reach agreement, as the Federal Service Labor-Management Relations Statute requires. The Department also continues to engage in bad faith, regressive bargaining by moving the goalpost, such as retracting its previously-stated interests and rescinding or striking concessions.

The Department has also failed to provide requested information to the Union. The duty to bargain in good faith includes the obligation to furnish, upon request, information that is “reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining.” 5 U.S.C. §7114(b)(4)(B). Failure to do so constitutes an unfair labor practice. In recent months, the Union has submitted several requests for information to the Department related to term bargaining. The requested information is required for the Union to respond to the Department’s proposals and to formulate its own bargaining proposals. The subject line for each of the Union’s submissions identified the contract

article(s) relevant to the requested information. However, the Department has failed to respond, in whole or in part, to several of the Union's requests, thereby delaying the bargaining process and depriving the Union of the information necessary to bargain a successor agreement. These actions violate 5 U.S.C. §7114(b)(4)(B) and constitute an unfair labor practice under 5 U.S.C. §7116(a).

Lastly, the Department violated Section II(H) of the Ground Rules, which provides, "The Department will provide the Union with a negotiation budget of \$25,000." More than four months after the Ground Rules were executed, the Department has failed to remit these funds to the Union.

### **Violations**

As a result of the actions described above, the VA has violated and continues to violate law and contract, as follows:

1. By violating the federal statutes outlined below, the VA violates Article 2 of the MCBA, which requires that the Department be governed by applicable federal statutes;
2. By violating the statutes outlined below, the VA violates Article 49 of the MCBA, which requires that the Parties have due regard for the obligations imposed by 5 U.S.C. Ch. 71;
3. By failing to bargain in good faith and submitting proposals designed to evade bargaining, the VA violates 5 U.S.C. §§7116(a)(1) and (a)(5), which requires the Department to consult and negotiate in good faith with the Union;
4. By engaging in excessively long caucuses, the VA violates 5 U.S.C. §§7116(a)(1) and (a)(5), which requires the Department to avoid unnecessary delays;
5. By failing to provide data that is normally maintained in the regular course of business and reasonably available and necessary for full and proper discussion, understanding, and negotiation of collective bargaining subjects, the VA violates 5 U.S.C. §§7116(a)(1) and (a)(5);
6. By withdrawing previous proposals without good cause, the Department has engaged in regressive bargaining in violation of 5 U.S.C. §§7116(a)(1) and (a)(5);
7. By failing to comply with mandatory procedures for exchanging bargaining proposals; by failing to provide the Union with a negotiation budget of \$25,000; by failing to provide reasonable estimates of the anticipated length of Department caucuses; and by failing to issue timely travel orders to the Union, the VA violates the Ground Rules;
8. 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:

1. To cease and desist further violations of the MCBA, the Ground Rules, and law;
2. To execute agreements reached by the Parties;
3. To post a notice in all VA locations where bargaining unit employees are present that the VA will refrain from further violations of the MCBA and law;
4. To make whole the Union and any employee affected by the Department's violations; and,
5. 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. Thomas Dargon, Jr. is the designated representative for this National Grievance. If you have any questions regarding this National Grievance, please contact him at 202-639-6424 or [thomas.dargon@afge.org](mailto:thomas.dargon@afge.org).



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