



# NATIONAL VETERANS AFFAIRS COUNCIL

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

Out of Many/One Union  
AFGE NVAC/AFL-CIO

## NATIONAL GRIEVANCE

NG-09/13/18

**Date:** September 13, 2018

**To:** Kimberly McLeod  
Executive Director  
Office of Labor-Management Relations  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, D.C. 20420  
[kimberly.mcleod@va.gov](mailto: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 its unilateral implementation of changes to conditions of employment in VISN 20 at the VA Portland Health Care System

## 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 Department of Veterans Affairs, including the VA Portland Health Care System, for its failure to comply with its contractual and statutory obligations when it implemented certain policies (see FN1 below) without first bargaining with the Union.

Specifically, the Agency violated Articles 2 and 47 as well as 5 U.S.C. §7116(a)(1) and (5).



## STATEMENT OF THE CASE

### **Background**

In the spring and summer of 2018, management at the VA Portland Health Care System (the “Agency”) provided notice to the Union of certain changes to conditions of employment for bargaining unit employees working within the VA Portland Health Care System. Because these changes affect more than one AFGE local within NVAC District 11, the NVAC delegated the bargaining authority to the regional level of NVAC District 11, represented by Chief Negotiator and District 11 representative, Donald “Don” Fowler.

In accordance with the Master Agreement past practices the parties scheduled a briefing on August 1, 2018 for the changes that had been proposed over the previous months. On July 30, 2018, Don Fowler called Terra Dacorte, the HR representative responsible for scheduling these types of briefings, to discuss rescheduling of the briefing due to the unavailability of one of the local presidents on the bargaining team. On that call, Mr. Fowler and Ms. Dacorte discussed possible dates to reschedule the briefing. There was no discussion of any waiver of the Union’s right to bargain over these issues.

Subsequently—without any recognition of the Union’s desire to reschedule the briefing—the Agency informed Mr. Fowler that it would be unilaterally implementing the changes that were to be discussed at the briefing on the grounds that the Union had **cancelled** the briefing and thereby **waived** its right to bargain.<sup>1</sup>

Neither assertion is accurate. The Union sought to *reschedule* the briefing. The Union did not waive its right to bargain over the proposed changes. Thus, the Agency’s unilateral implementation of these changes violates the Master Agreement and federal statutes which require bargaining with the Union over changes to conditions of employment *prior to* implementation.

### **Violation**

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

- Article 2, Section 1 of the MCBA: requiring the Agency to comply with all applicable federal statutes;

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<sup>1</sup> Such notices were provided to Mr. Fowler by email on the following dates: **August 14** (“VISN 20 – VA Portland, HCS, Upgrade Site Security at Portland and Vancouver Facilities”; “Conversion of Biomedical Equipment Support Specialists over to Functional Statements”); **August 16** (“Nutrition and Food Services/Clinical Section updated Competency Assessments”); and **August 20** (“MCM 05-35 – Re Compressed Work Schedules”; “MCM 125-02 Decedent Affairs”; MCM 11-53 – New MCM Evaluation and Management (E&M) Coding Guidelines.”).

- Section 7116(a)(1) of the Federal Service Labor-Management Relations Statute: prohibiting the Agency from interfering with its employees' rights to collectively bargain;
- Section 7116(a)(5) of the Federal Service Labor-Management Relations Statute: requiring the Agency to negotiate in good faith;
- Article 47, Sections 1 and 2 of the MCBA: providing a contractual obligation to bargain with the Union; and
- Any and all relevant articles, laws, regulations, customs, and past practices not herein specified.

### **Remedy Requested**

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

- To return to the *status quo ante*
- To cease and desist any implementation of the policies described above;
- To post, and distribute to all affected employees via electronic mail, an appropriate notice signed by the highest appropriate VA official acknowledging the Agency's illegal conduct and affirming its obligations under the Statute and the contract; 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 contact the undersigned at (202) 639-6424.

Submitted by,



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Cc: Alma L. Lee, President, NVAC  
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, NVAC