



# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE

NG-4/16/21

**Date:** April 16, 2021

**To:** Ophelia Ann Vicks  
Acting Executive Director  
Office of Labor-Management Relations  
U.S. Department of Veterans Affairs  
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*Sent via electronic mail only*

**From:** Christopher Zatrutz, 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 unilaterally implementing the COVID-19 Employee Well-Being 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 individuals acting as agents on behalf of the Department of Veterans Affairs (“Agency”) for unilaterally implementing the COVID-19 Employee Well-Being Survey. To date, the Agency has failed to remedy this violation and as such continues to violate the MCBA and federal law.

Specifically, the Agency violated Articles 2, 3, 47, and 49 of the MCBA; 5 U.S.C. §7116(a), and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified. The Union specifically reserves the right to supplement this grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.

### STATEMENT OF THE CASE

#### **Background**

On April 7, 2021, the Agency’s Office of the Inspector General (“OIG”) Office of Healthcare Inspections published a COVID-19 Employee Well-Being Survey at selected VHA

facilities<sup>1</sup> to review the Agency's processes to address the psychological and emotional well-being of employees in the context of the COVID-19 pandemic. Attachments A and B. The survey closed on April 16, 2021.

Article 49 of the MCBA prescribes specific requirements for Agency surveys. The Agency must provide notice and bargain with the Union prior to communicating directly with bargaining unit employees through a survey. See, Article 49, Section 8(A). Participation in surveys must be voluntary and the Agency must ensure that employee responses are confidential and that employee anonymity will be protected. See, Article 49, Section 8(B).

Here, the Agency failed to provide advance notice or bargain with the Union prior to publishing the survey. Further, the Agency failed to inform employees that the survey is voluntary and that their anonymity would be protected. The Agency's email notifying bargaining unit employees of the survey and the survey itself do not indicate that the survey is voluntary. Attachments A, B, and C. What's more, at some facilities, the Agency's email notifying bargaining unit employees of the survey included in the subject line "[Response Required]." Attachment A. This suggests that the survey is mandatory. The survey requires bargaining unit employees to include their name, official duty title, VISN, and facility. Attachment C. As a result, the survey plainly fails to protect employee anonymity.

Additionally, Articles 47 and 49 of the MCBA require the Department to bargain with the Union over changes to conditions of employment. Moreover, under section 7116(a)(1) and (5) of the Statute, the Union must be given adequate notice and a pre-implementation opportunity to bargain before the Department may lawfully implement changes in working conditions affecting unit employees.

By failing to bargain with the Union, the Department committed an unfair labor practice under section 7116(a)(1) and (5), violated its contractual duty to bargain under Articles 47 and 49 of the MCBA. In doing so, the Department also violated Article 2 of the MCBA, which requires the Department to comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Finally, by failing to consult and negotiate in good faith with the Union, the Department is in violation of Article 3 of the MCBA, which 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.

## **Violation**

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

- Article 2 of the MCBA: requiring the Department to comply with all federal law and regulations;

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<sup>1</sup> Affected facilities include, for example, the Richard L. Roudebush VAMC and the VA Sierra Nevada Health Care System.

- Article 3 of the MCBA: requiring the Department to maintain an effective, cooperative labor-management relationship with the Union;
- Article 49, Section 8 of the MCBA: requiring the Department to provide notice and bargain with the Union prior to conducting a survey; requiring that participation in surveys be voluntary; and requiring the Department to protect employee anonymity and ensure that employee responses are confidential.
- Article 47 and 49 of the MCBA: requiring the Department to bargain with the Union over changes to conditions of employment;
- 5 U.S.C. §7116(a)(1) and (5): requiring the Department to consult and negotiate in good faith with the Union;
- Any and all other relevant articles, laws, rules, regulations, customs, and past practices not herein specified.

### **Remedies Requested**

To remedy the above violations, the Union asks that the Department agree to the following:

1. To return to the *status quo ante*;
2. To immediately cease and desist implementation of the COVID-19 Employee Well-Being Survey until such time as the Department has satisfied its bargaining obligations with the Union;
3. To cease and desist further violations of the MCBA and federal law;
4. To fully comply with its contractual obligations under Articles 2, 3, 47, and 49 of the MCBA and its statutory obligations under Federal Service Labor-Management Relations Statute and the FLSA
5. To post an electronic notice, signed by the VA Secretary, to all AFGE bargaining unit employees that the Department violated the law and that the Department will refrain from further violations of the law;
6. To make whole the Union and any employee adversely affected by the Department's violations;
7. 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. The undersigned is the designated representative for this grievance. If you have any questions regarding this National Grievance, please contact the undersigned at AFGE Office of the General Counsel.




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