



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-10/13/2021

7S/398926

Date: October 13, 2021

To: Ophelia A. Vicks
Acting Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
ophelia.vicks@va.gov
Sent via electronic mail only

From: Shalonda Miller, 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 Changing Employees’ Bargaining Unit Status Without Providing Notice and Predecisional Involvement to the Union

STATEMENT OF THE CHARGE

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 (“NVAC” or “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 (“Department”) concerning the Department unilaterally changing employees’ bargaining unit status (“BUS”) codes and removing them from AFGE’s covered bargaining unit without first notifying and seeking predecisional involvement from the Union, as required by the MCBA. To date, the Department has failed to remedy this violation, and as such, continues to violate the parties’ MCBA and federal law.

Specifically, the Department violated Articles 1, 2, 3, 45, 47 and 49 of the MCBA; 5 U.S.C. Section 7116 (the “Statute”); and any and all other relevant laws regulations, Master Agreement provisions, 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

Under Article 1, Section 4 of the MCBA, the Union shall be “predecisionally involved in bargaining unit determinations for position changes and the establishment of new positions.” MCBA at 4. It further requires that where the parties cannot agree over whether a position is in the bargaining unit, **but it had previously been in the bargaining unit**, the position will remain in the bargaining unit until a Clarification of Unit (“CU”) petition is decided by the FLRA. *Id.* (emphasis added). The Department is also required to collect dues from the employees and allocate those dues to the Union until a decision is issued on the CU petition. *Id.* at 239.

On September 24, 2021, the President of AFGE Local 1206 (Sacramento, CA) received notice that VISN 21¹ had updated national position descriptions (“PDs”) for certain VHA Credentialing and Privileging (“C&P”) employees. The notice also stated that the Department now determined the positions to be outside the AFGE bargaining unit. The impacted PDs, and their associated positions, were as follows:

99873-S Health System Specialist GS-11
99876-S Health System Specialist SOD GS-07/09
99868-S Program Support Assistant GS-06
99868-S Program Support Assistant GS-07
99875-S Health System Specialist/C&P manager GS-11
99875-A Health System Specialist/C&P manager GS-12

The notice indicated that the employees would be removed from the bargaining unit within 30 days—that is, by October 24, 2021. The Department issued similar notices to AFGE Local 1224 (Las Vegas, NV) and AFGE Local 1216 (San Francisco, CA).² (*See* notices to AFGE Locals, attached as Exhibit A). Incredibly, without providing any legal basis for seeking to exclude these positions from the bargaining unit, the notice for AFGE Local 1216 would ostensibly remove the Union President and Executive Vice President from the bargaining unit if the Department proceeded with the changes. In total, the Department plans to remove more than 40 vacant or encumbered positions from the AFGE bargaining unit in VISN 21 alone.

The Department’s actions constitute multiple violations of the MCBA and federal law. First, the changes pertain to “national position descriptions;” therefore, the Department must provide notice of such changes to the National VA Council—not AFGE Local Unions. Second, by failing to grant the Union predecisional involvement in the assessment of these position descriptions, the Department violated Article 1 of the MCBA. Further, by refusing to notify, consult, and negotiate in good faith with the Union prior to changing the PDs, the Department committed an unfair labor practice under 5 U.S.C. § 7116(a)(1), (5) and (8). Article 2 of the MCBA requires that the Department 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 Department also failed to comply with Article 2.

¹ VISN 21 refers to the VA Integrated Service Network comprised of more than 60 work sites throughout northern and central California, Nevada, and Hawaii.

² AFGE specifically reserves the right to supplement the list of impacted AFGE locals until such time that this National Grievance is resolved or settled.

Additionally, 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 implementing the new consult process, the Department renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes.

If the Department proceeds with unilaterally removing these positions from the bargaining unit on or around October 24, it will be in violation of Article 45, Section 8 of the MCBA which provides that where there is a dispute over an employee's continued bargaining unit status, dues continue to be collected and allocated to the Union until a CU petition is decided. However, if the Department fails to make these allotments, the impacted Local Unions must be compensated for any dues lost.

Finally, the Department violated Articles 47 and 49, which set forth the parties' responsibilities regarding mid-term bargaining at the national level.

Violations

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

- Article 1 of the MCBA: prohibiting the Department from unilaterally removing positions from the bargaining unit without first involving the Union;
- Article 2 of the MCBA: requiring the Department to comply with federal law and regulations;
- Article 3 of the MCBA: requiring the parties to promote effective labor-management relationships by using cooperative methods in an effort to fulfill their collective bargaining obligations;
- Article 45 of the MCBA: requiring the Department continue to collect and allocate dues from bargaining unit position even when there is an ongoing dispute as to whether the position is in the bargaining unit;
- Articles 47 and 49 of the MCBA: which set forth the parties' responsibilities regarding mid-term bargaining at the national level, including, the Department's obligation to provide advance written notice to the President of the NVAC, or her designee, of changes in personnel policies, practices, or working conditions affecting the interests of two or more locals;
- 5 U.S.C. § 7116: requiring the Department to provide adequate notice of proposed changes in conditions of employment involving AFGE bargaining unit employees, and providing the Union an opportunity to bargain prior to implementing such changes; and
- Any and all other relevant laws, regulations, customs, Master Agreement provisions and past practices not herein specified.

Remedies Requested

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

- Cease and desist any change in bargaining unit status of C&P employees;
- To fully comply with its contractual obligations under Articles 1, 2, 3, 45, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. § 7116;
- To distribute an electronic notice posting to all bargaining unit employees concerning the Department's failure to properly provide notice and an opportunity to bargain to the NVAC of proposed changes in bargaining unit status of C&P employees;
- To make whole any AFGE Local Union that has, or will, fail to receive dues allotments due to the Department's unilateral removal of C&P positions from the bargaining unit;
- Agree to comply with any and all other relevant laws, regulations, customs, Master Agreement provisions, and past practices not herein specified.
- Agree to any and all other appropriate remedies 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 the AFGE Office of the General Counsel.

Submitted by,



Shalonda Miller
Staff Counsel, National VA Council
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
Tel: 202-639-6424
Fax: 202-379-2928
shalonda.miller@afge.org

cc: Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Thomas Dargon, Supervisory Attorney, AFGE/NVAC

Exhibit A

Date: September 24, 2021

From: Eveline Barnard, Senior Strategic Business Partner, Human Resources (612)

Subj: Change in Bargaining Unit Employee (BUE) Status

To: Gloria Salter, Local AFGE 1206 Union President

1. This memorandum serves as notification of a change in employee bargaining unit status due to new VA standardized position descriptions for the following:
 - a) Program Support Assistant, GS-0303-06, Position Description (PD)# 99868-S
 - b) Program Support Assistant (Credentialing Specialist), GS-0303-7, PD# 99868-S
 - c) Health System Specialist, GS-0671-07/09, PD# 99876-S
 - d) Health System Specialist (VISN Credentialing and Privileging Officer), GS-0671-11, PD# 99873-S
 - e) Health Systems Specialist / C&P Manager, GS-0671-11, PD# 99875-S
 - f) Health Systems Specialist / C&P Manager, GS-0671-12, PD# 99875-A.
2. The following employees at VISN 21, Northern California Health Care System are impacted by this change:
 - Alderete, Kristina M
 - Azcona, Jose L
 - Clarkston, Connie
 - Goon, Regina
 - Gonzalez, Sergio G
 - Laraya, Catherine Eleanor
 - Neptune, Contesa A
 - Taporco, Irene M
 - Van Dalen, Barbara A
 - Williams, Jazmin Deserell
 - Ybarra, Leandra A
3. Impacted employees in the above positions will no longer be part of the bargaining unit 30 days following this notification. The duties of the position and the performance standards that each employee is evaluated under will remain the same.
4. Should you have questions about this change, please contact Eveline Barnard at eveline.barnard@va.gov or (925) 813-5314.

Eveline Barnard
Senior Strategic Business Partner

VISN 21, Northern California Health Care System
Attachments: Impacted Position Discriptions



99877-S Health final pkg 99875-S final pkg PSA FINAL PKG SOD GS Final Pkg SOD-06 Final Pkg SOD-07
System Specialist (C&HSS 671-12 (C&P Ma0303-07 99868-S.pdf11 FACILITY CP MGR Program Support AshSS (C&P Specialist)



Final SOD PD#
99873-S HSS GS-067

Date: September 29, 2021

From: Assistant Human Resources Officer/Sr. Strategic Business Partner

Subj: Change in Bargaining Unit Employee (BUE) Status

To: President, APGE Local 1224

1. This memorandum serves as notification of a change in employee bargaining unit status due to new VA standardized position descriptions for the following:
 - a) Program Support Assistant, GS-0303-06, Position Description (PD)# 99868-S
 - b) Program Support Assistant (Credentialing Specialist), GS-0303-7, PD# 99868-S
 - c) Health System Specialist, GS-0671-07/09, PD# 99876-S
 - d) Health System Specialist, GS-0671-07/09, PD# 99876-A
 - e) Health System Specialist (VISN Credentialing and Privileging Officer), GS-0671-11, PD# 99873-S
 - f) Health Systems Specialist / C&P Manager, GS-0671-11, PD# 99875-S
 - g) Health Systems Specialist / C&P Manager, GS-0671-12, PD# 99875-A.
2. The following employees at VA Southern Nevada Healthcare System are impacted by this change:
3.
 - Robert Briones
 - Luana Bulseco
 - Kenyonna Davis
 - Teddie Davis
 - Veronica Harris
 - Abigail Zuniga
 - Vacant HSS Specialist
4. Impacted employees in the above positions will no longer be part of the bargaining unit 30 days following this notification. The duties of the position and the performance standards that each employee is evaluated under will remain the same.
5. Should you have questions about this change, please contact Janelle Wright.



Jason M. Cleveland

Attachments: Impacted Position Discriptions



99877-S Health final pkg 99875-S final pkg PSA FINAL PKG SOD GS Final Pkg SOD-06 Final Pkg SOD-07
System Specialist (C&P HSS 671-12 (C&P M&0303-07 99868-S.pd11 FACILITY CP MGR Program Support AsHSS (C&P Specialist)



Final SOD PD# 99876-S Health
99873-S HSS GS-067 System Specialist (C&P



Date: September 29, 2021

From: Assistant Human Resources Officer/Sr. Strategic Business Partner

Subj: Change in Bargaining Unit Employee (BUE) Status

To: President, APGE Local 1224

1. This memorandum serves as notification of a change in employee bargaining unit status due to new VA standardized position descriptions for the following:
 - a) Health System Specialist, GS-0671-07/09, PD# 99876-S
2. The following employee at VA Southern Nevada Healthcare System are impacted by this change:
 - Tami E. Biniaz
3. Impacted employee in the above positions will no longer be part of the bargaining unit 30 days following this notification. The duties of the position and the performance standards that each employee is evaluated under will remain the same.
4. Should you have questions about this change, please contact Janelle Wright.



Jason M. Cleveland

Attachments: Impacted Position Descriptions



99876-S Health
System Specialist (C)

From: [Lanier-Gates, Cheryl N.](#)
To: [Julia Turner](#)
Cc: [Bende Toth. Esq.](#); [Clark Parker](#); [Jay Hubbard](#)
Subject: FW: VISN 21 SUSPENSE DUE September 30, 2021: Union notification - National PDs - C&P staff - outside the bargaining unit (8888)
Date: Friday, September 24, 2021 1:09:52 PM

Please Advise

From: Owens, Kenneth L. <Kenneth.Owens5@va.gov>
Sent: Friday, September 24, 2021 7:46 AM
To: Allison, Monica M. <Monica.Allison@va.gov>; VHASFC HRMS Suspense <VHASFCHRMSSuspense@va.gov>; Sanders, Taniesha N. <Taniesha.Sanders@va.gov>; Clark, Latoya M. (SFC) <Latoya.Clark@va.gov>
Cc: Valadez, Kimberly <Kimberly.Valadez@va.gov>; Lanier-Gates, Cheryl N. <Cheryl.Lanier-Gates@va.gov>; Hoebeke, John A. <John.Hoebeke@va.gov>
Subject: RE: VISN 21 SUSPENSE DUE September 30, 2021: Union notification - National PDs - C&P staff - outside the bargaining unit (8888)

Monica –

Adding C&P leadership to this thread. Credentialing and Privileging need to have input via working in collaboration with ER/LR.

Thanks

Ken Owens, MBA, MHA, VHA-CM
Senior Strategic Business Partner
Supervisory, Human Resources Officer
VA San Francisco Healthcare System
415.221.4810, ext. 26056

From: Allison, Monica M. <Monica.Allison@va.gov>
Sent: Friday, September 24, 2021 7:41 AM
To: VHASFC HRMS Suspense <VHASFCHRMSSuspense@va.gov>
Cc: Valadez, Kimberly <Kimberly.Valadez@va.gov>; Lanier-Gates, Cheryl N. <Cheryl.Lanier-Gates@va.gov>
Subject: FW: VISN 21 SUSPENSE DUE September 30, 2021: Union notification - National PDs - C&P staff - outside the bargaining unit (8888)

From: Groneberg, Steven H. <Steven.Groneberg@va.gov>
Sent: Thursday, September 23, 2021 4:01 PM
To: V21 Suspense <V21Suspense@va.gov>
Cc: V21 HRSSBP <V21HRSSBP@va.gov>; V21 ER LR Inquiry <V21ERLRInquiry@va.gov>; Craig, Hareld D. <Hareld.Craig@va.gov>; VHA V21 ERLR Supervisors <VHAV21ERLRSupervisors@va.gov>

Subject: VISN 21 SUSPENSE DUE September 30, 2021: Union notification - National PDs - C&P staff - outside the bargaining unit (8888)

SUSPENSE DUE: **September 30, 2021**

VISN 21 Leaders,

BACKGROUND: In late 2020, national position descriptions (PDs) were developed for VHA Credentialing and Privileging staff, and in June 2021 those PDs were determined to be outside the bargaining unit (8888). Effected PDs are as follows:

- 99873-S Health System Specialist GS-11
- 99876-S Health System Specialist SOD GS-07/09
- 99868-S Program Support Assistant GS-06
- 99868-S Program Support Assistant GS-07
- 99875-S Health System Specialist/C&P manager GS-11
- 99875-A Health System Specialist/C&P manager GS-12

ACTION: Attached you will find a Word document listing impacted employees by facility. Please work with your local HR Senior Strategic Business Partners (SSBP) to notify your local unions of the planned change in PD and bargaining status in writing. You may use the attached sample templates to develop the union notification memorandum and employee notifications. Notify your local unions and impacted employees no later than September 30, 2021, and afford the union 30 days before effecting the change. If you receive any requests for negotiations (example, *procedures and appropriate arrangements/I&I*) during the 30-day period, please notify your facility's SSBP.

New PDs are embedded within the sample union notification memorandum attached. Once your union notification memorandum is developed on or prior to September 30, 2021, please send your draft to "V21 ER LR Inquiry" for review and acknowledgement prior to issuance.

Regards, Steve

Steven H. Groneberg | Chief, ER-LR SSU | VA Sierra Pacific Network (VISN 21)

391 Taylor Blvd. Suite 200, Pleasant Hill, CA 94523

Anytime work cell: (650) 799-8408, Tuesday-Friday office phone: (925) 373-4700 ext. 35221 (Livermore Division)