
In the Matter of the Arbitration Between)
)
 AMERICAN FEDERATION OF)
 GOVERNMENT EMPLOYEES)
 National VA Council 53)
)
 "Union")
)
 and)
)
 U.S. DEPARTMENT OF VETERANS)
 AFFAIRS)
)
 "Agency")
)

Case No.: 200317-04918

BEFORE: Joshua M. Javits, ARBITRATOR

APPEARANCES:

For the Agency: Alfred Steinmetz

For the Union: Shalonda Miller

DATE OF VIRTUAL HEARING: March 24, 2021

DATE OF BRIEFS: June 3, 2021

DATE OF AWARD: September 26, 2021

ISSUE:

Whether the Department failed to provide sufficient notice of changes in conditions of employment to the Union, thereby violating the Federal Sector Labor Relations Act and the parties' collective bargaining agreement?

If so, what shall be the remedy?

BACKGROUND AND FACTS:

The instant grievance arises from the Union's claim that the Agency failed to provide sufficient notice of changes in employee's conditions of employment following a realignment program implemented in 2019.

On May 2, 2019, the Agency notified the Union that it planned to realign non-MCCF work and employees from the Veterans Integrated Services Network (VISN) to the CPACs (Consolidated Patient Account Centers). On May 6, 2019, the Union issued a Demand to Bargain to the Agency regarding proposed changes associated with the transition.

On June 10, 2019, the Agency provided a telephone briefing to the Union's national CPAC mid-term bargaining team, which included Jennifer gum, Oscar Williams, Amber Mack, and Christine Surette. During the briefing, the Union was informed that the realignment of non-MCCF employees would

initially occur in VISN 4 as a pilot program. The Agency provided a three-page document on the VISN 4 realignment to the Union as part of the briefing.

Director of CPAC Operations, Vonda Barton, testified that she briefed the Union about the transition and fully notified the Union of management's intent to rollout the implementation of the transition throughout all of the CPAC, including providing the Union with relevant briefing documents. The Agency's briefing fully notified the Union of its intent to rollout the implementation of the Transition throughout all of the CPACs, Barton argued. The Union failed to provide any feedback and failed to articulate any concerns about the transition, however, Director Barton insisted.

Barton testified she provided the Union with the Implementation Rollout and VISN 4 Training Plan slides (See Joint Exhibit 3). She further testified the plan was not only to realign VISN 4, but to follow the realignment map (See first page of Exhibit 1 of Joint Exhibit 3). In fact, she noted that the Joint Implementation Rollout states: "Implementation rollout plan starting with VISN 4 VAMCs serving as the pilot for the implementation process and one VISN has been identified for each CPAC for the initial rollout. Remaining VISNs to be aligned based on feedback from VISN and CPAC leadership (identified in grey)."

Director Barton accepted that, during the initial briefing with the Union on June 10, 2010, she used the word “unknown” to describe the pilot program transition. According to Barton, she used the phrase unknown several times because “You know, there’s so much unknown with this realignment. We don’t know the volume of work; we don’t know how many veterans will elect to be treated as [a] non-MCCF veteran. We didn’t [know].” However, Barton testified that she nonetheless believed that the three- page briefing document adequately “laid out everything in a sequence that we were intending to follow for each of the CPACs.” Even though the briefing documents did not include a timeline for the realignment. Barton argued that the briefing document was more than adequate for the Union.

According to Director Barton, she explained that the Agency’s intent was to follow the same steps for each CPACs as had been laid out in the VISN 4 pilot presentation. She testified that “depending on how it works with VISN 4, and what stumbling blocks we might be coming upon that we’re not aware of, the plan was to eventually roll out to all the CPACs using the schedule there, but the timelines were dependent on how well VISN 4 did.” The intention was, Barton testified, to have all the VISNs rolled out within the next fiscal year after VISN 4. Barton testified that she believed that the 3-page briefing document provided to the Unio adequately laid out everything that management was intending to do for each of the CPACs – even if there was no explicit timeline for the realignment process. Barron accepted, however, that the Agency did not notify the Union

once the initial VISN 4 pilot program had been concluded and recognized that the Agency did not provide any details to the Union about the realignment program being extended Agency-wide.

During her testimony, Director Barton denied that there had been any change in employee working conditions as a result of the realignment process. Barton testified that she had informed the Union that the position description for non-MCFF employees would not change as part of the realignment program. Although Barton accepted that at least one employee (from VISN 15) may have had her position description temporarily changed (to indicate that they were not bargaining unit employees), she nonetheless insisted that there was no change in working conditions for effected employees. Some non-MCFF employees may have been assigned something other than non-MCFF billing duties during the transition if the CPAC did not have enough work for them to do, Barton stated.

Barton further denied that employee telework status was in any way impacted by the realignment. While Barton accepted that an employee's ability to telework would have depended on the facility's ability to provide equipment that could facilitate such work, she insisted that no employee was asked to purchase computer equipment in order to telework.

At the hearing Union Representative Jennifer Gum testified that she was present during the Agency's briefing on June 10, 2019. During the meeting, Director of CPAC Operations, Vonda Barton, presented the Union with a three (3) page briefing document and told the Union that the realignment and any changes that came from that the realignment of non-MCCF employees would occur in VISN 4 only. This was "just a pilot" program that was going to be tested on VISN 4. No further information was provided by Agency management to the Union, Gum testified.

Gum further testified that the Union was presented with very little information about the changes and noted that there were "a lot of unknowns" about the proposed realignment. Gum testified that it was her understanding "that we would come back to the table because there were so many unknowns about how this was going to do and what changes were going to take effect because this was just the pilot." Agency management was unable to give a rollout schedule and was unable to provide any details about the scope of the pilot realignment, Gum stated. The Agency did, however, claim that there would be no changes in the type of working performed by bargaining unit members.

According to Union Representative Gum, the Union believed that Agency management intended to try out some ideas via the initial pilot program. Then, after an undetermined period of time, the Agency would alert

the Union as to which ideas they were going to implement on a permanent basis Agency-wide, pursuant to Article 47, Section 2. Gum testified that she thought that the Union would get to come back to the negotiating table once the Agency had a better idea of what its plans were after completing the pilot program at VISN 4. Once the Agency had completed the pilot program, the Union would then tell the Agency if there were any of those ideas over which the Union wanted to bargain via a demand to bargain, Gum testified.

Gum testified that normally Agency management would return to the negotiating table after the pilot program had been conducted and it would negotiate with the Union over any additional transition.

The Agency, however, never got back to the Union and instead performed a national rollout of the realignment program without informing the Union. Several months after the initial June 2019 briefing, Gum learned that non-MCCF employees were realigned from VISN 15 to the CPCPAC. The Agency had provided no notice to the Union concerning those subsequent changes, Gum noted.

According to Gum, the Union had thought that there would be no change to employee working conditions during the realignment program and that the nature of employee work duties would essentially be the same. The Union had expected that all that was required was some training for employees regarding

the use of a new financial tool.

Although the Agency had told the Union that any changes would be minimal in nature, it soon became clear that there was lots of additional technical training needed due to the significant changes implemented, Gum stated. Employees were now required to perform different work duties to what they had performed previously, yet they had not been provided with any training. If the Union had been provided with this information by the Agency in advance, it would have requested training for employees, and sought a ramp-up/acclimation period. The fact that employees had not been trained in these new work duties meant that they would have difficulty in meeting their productivity requirements, which in turn could affect their performance appraisals, Gum testified.

Union Representative Gum testified that there was also an issue with bargaining unit member's' telework status following the realignment. Gum testified that she was contacted by some employees who told her that they had to return their Agency-issued telework equipment following the realignment because the CPAC did not wish to provide equipment to teleworkers. These employees were informed that they would need to purchase computer equipment in order to continue to telework. Gum testified that she brought the issue to the attention of the Director of CPAC Operations, Vonda Barton, and accepted that the telework issue has been mostly resolved at this point.

Employee Beronica Cameron-Mack testified that, prior to the implementation of the realignment program, an Agency manger had come to the Cleveland office and told employees “specifically that our duties would not change.” This Agency manager told employees that “there may be some changes in future, but he didn’t go into any details,” Cameron-Mack testified.

According to Cameron-Mack, her work duties as a biller were directly affected by the Agency’s realignment program, however. She testified that while her work duties were still the same as in Cleveland, she had “additional duties added on” after the realignment. According to Cameron-Mack, she had to adapt her work duties to ensure she was doing things “how CPAC was doing things.” “After 3-4 months, we had to change our billing to a new way – the way that CPAC billed.”

This change in billing method required her to learn and to perform new, additional work duties, Cameron-Mack explained. There were now new processes in place that employees had to adhere to, but no training was ever provided by the Agency for these additional work duties/procedures prior to the transition, she noted. Employee Cameron-Mack acknowledged, however, that training was subsequently provided by the Agency in February 2021, following the transition.

POSITIONS OF THE PARTIES:

The Union's Position:

The Union argues that the Agency committed an unfair labor practice in violation of 5 U.S.C. s7116(a)(1) and (5) by refusing to bargain with the Union over the realignment. While the Union accepts that the realignment of work functions is a management right under 5 U.S.C Section 7106(a)(1), it notes that where an agency exercises a reserved right it must notify the Union and bargain at the Union's request over appropriate procedures and arrangements.

5 U.S.C. s7116 (Unfair Labor Practices) (a)(1) and (5) provides that:

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency...

(1) *to interfere with, restrain, coerce any employee in the exercise by the employee of any right under this chapter;...*

(5) to refuse to consult or negotiate with a labor organization as required by this chapter.

(Emphasis added).

The Union insists that management's realignment in the instant case had a "substantial impact" on the affected employee's conditions of employment. This realignment had a significant effect on major conditions of employment, such as changing employees' duty stations, unilaterally terminating telework arrangements, and requiring employees to perform new work duties outside the

scope of their position descriptions. Union witnesses testified that the parties should have been able to negotiate over training schedules, acclimation periods, telework availability, and equipment, among other things relating to the realignment.

The Union notes that Agency management does not deny that it had a duty to bargain over appropriate arrangements related to the realignment. It is undisputed that Director of CPAC Operations, Vonda Barton, provided notice of the proposed changes to the Union for the purposes of bargaining. By providing such notice to the Union, Agency management understood that it had a duty to provide the Union notice and an opportunity to bargain.

According to the Union, the Agency's failure to comply with its bargaining obligations in the instant case constitutes an unfair labor practice and a violation of the parties' Master Collective Bargaining Agreement (MCBA).

The Union believes that the Agency's notice of the non-MCFF employees' realignment was deficient, as management did not inform the Union of the scope, nature, and timing of the proposed changes. During its briefing session with the Union, the Agency provided a 3-page document in an attempt to satisfy its statutory and contractual requirement to provide advance notice of proposed changes in conditions of employment.

According to the Union, those briefing materials, however, did not provide details on the scope or timing of changes concerning non-MCFF employees. Moreover, management claimed that the Agency's intent was to follow the same steps for each of the CPACs as laid out in the pilot presentation. It was for this reason that the Union did not submit proposals following the initial briefing because the Union's bargaining team was told the pilot program would not result in any changes in conditions of employment. Only months after the initial briefing was the Union informed that non-MCFF employees were realigned to the CPAC from VISN. The Agency, however, provided no notice to the Union concerning these subsequent changes, the Union insists.

The Union notes that, although the Agency had claimed that position descriptions for non-MCFF employees would not change following the realignment, some employees had their PDs temporarily changed to indicate that they were non-bargaining unit members. These types of changes in conditions of employment should have been bargained if the Agency had properly consulted and negotiated with the Union during the realignment.

The Union dismisses the Agency's assertion that the nature and extent of the changes were unknown at the date of management's initial briefing with the Union. If the nature and scope of the proposed changes were unknown to the Agency at that time, then management cannot dispute that it had an obligation to later notify the Union and provide it with an opportunity to bargain once the information became available. The Agency, however, failed to engage with the Union in any way after the initial briefing presentation.

The Union insists that it has met its burden of showing the Agency had a duty to bargain over the realignment of non-MCCF bargaining unit employees from the VISNs to the CPACs and that the Agency's notice of changes in conditions of employment was not sufficiently detailed to provide adequate notice to the Union. For these reasons, the Union requests that the Arbitrator find the Agency committed an unfair labor practice in violation of Section 7116(a)(1) and (5) of the FSLMR statute and violated the corresponding articles of the Master Collective Bargaining Agreement. By way of remedy, the Union requests that the Agency be ordered to post a notice acknowledging its violations to all bargaining unit employees, and asks that the Arbitrator direct a retroactive bargaining order.

The Agency's Position

According to the Agency, the Union has failed to meet its burden that the Agency committed an unfair labor practice. The Agency believes the circumstances of the instant case demonstrates that management acted in good faith throughout the realignment process. Management approached the Union on May 2, 2019, and informed it of the transition of non-MCCF work and employees to the CAPCs. Then, in June 2019, after the Union had issued a Demand to Bargain regarding the transition, Director of CPAC Operations, Vonda Barton, briefed the Union about the transition and fully notified the Union of management's intent to rollout the implementation of the transition throughout all of the CPAC, including providing the Union with relevant briefing documents. The Union failed to provide any feedback and failed to articulate any concerns about the transition, however. According to the Agency, it fully met its bargaining obligation under Article 47 of the parties' MCBA.

The Agency rejects the Union's assertion that it did not submit proposals to management as they "were never contacted about what occurred after the pilot" program rollout. Any suggestion that the Union planned to allow management to try out some ideas during the pilot program and then, after the pilot program rollout was complete and once the Agency had alerted the Union as to which ideas it was planning to impellent on a permanent basis Agency-wide, the Union would tell management if there were any issues over which the Union wanted to bargain via a demand to bargain is baseless. What actually

occurred was that management informed the Union of proposed changes, the Union submitted a demand to bargaining and then, in response, management presented its briefing to the Union. The Union failed to send any proposals to management after the Agency's presentation, however. Agency management fully met its bargaining obligations under Article 47, Section 2 of the Master Agreement, the Agency insists.

According to the Agency, the Union's claim that it was waiting until after the initial transition rollout before it would begin to bargain over it makes no sense. The purpose of bargaining under the parties' Master Agreement is for the parties to negotiate before the Agency rolls-out any new item that might affect the working conditions of bargaining unit employees. In any event, the Agency briefing to the Union included a training plan that outlined a variety of changes. There were sufficient issues for the Union to raise for bargaining following the initial briefing – even if Agency management did not extend the initial roll-out beyond VISN 4.

The Agency notes, however, that the Union took no action after the Agency's briefing. All of the evidence presented at the hearing shows that the Union had an opportunity to question the Agency about potential differences between the non-MCCF work at the medical centers versus CPACs. Despite being briefed by the Agency, the Union took no action. Management believes that, since there were no additional changes implemented between the rollout for

VISN 4 and the rollout for the other VISNs, then there was no need for the Agency to re-bargain the same issues. The Union had an opportunity to bargain after the initial transition briefing and it chose not to do so, the Agency insists.

The Agency contends that the initial transition, while it may have begun with the VISN pilot, was planned for all CPACs. Management's plan was not only to realign VISN 4, but to then follow that up by extending it to each CPAC soon thereafter. In fact, the Joint Implementation Rollout (See Joint Exhibit 3) states: "Implementation rollout plan starting with VISN 4 VAMCs serving as the pilot for the implementation process and one VISN has been identified for each CPAC for the initial rollout. Remaining VISNs to be aligned based on feedback from VISN and CPAC leadership (identified in grey)." For the Union to now claim that it believes the rollout plan was just related to the pilot program is unavailing.

According to the Agency, it was abundantly clear that the initial rollout plan would start with VISN 4 and, once that had taken place, it would extend to each CPAC. For the Union to claim it did not understand from the initial briefing documents that the pilot was to extend beyond VISN 4 is unreasonable. According to the Agency, the Union was fully briefed not only on the pilot but on the rollout to all of the CPACs. Although it is clear that the Agency intended the transition to be for all CPACS – pilots first by VISN 4 – the Union did not submit any proposals following the briefing.

The Agency denies that there was any change in working conditions for bargaining unit employees. Although the Union claimed some employees had new additional work duties added after the transition, the Agency insists that there was no evidence that this was the case. Rather than employees being required to perform new work duties, what occurred was that affected employees were required to perform the same work duties but they were asked to do so in a different way. Agency supervisor Debbie Brooks testified that changes in some employee's work duties were due a difference in the way the Cleveland office billed. There was no substantive change in actual work duties – only in the way the billing process was conducted., the Agency asserts

The Agency further denies that employees were removed from telework following the transition rollout. While the Agency accepts that there was an issue with employee telework, as some employees were told that they could not perform telework, it notes that this was due to a computer coding error. When the matter was brought the management's attention, the Agency corrected the issue and told affected employees that they could now perform telework. Any changes to how telework was permitted for affected employees during the transition have been corrected, the Agency contends. For that reason, the Agency insists that there was no change in working conditions for bargaining unit members.

DECISION AND AWARD:

The issue to be addressed in the present grievance relates to whether or not the Agency violated 5 U.S.C. s7116(A)(5) and the parties' Master Collective Bargaining Agreement by failing/refusing to bargain over the realignment of non-MCFF employees.

5 U.S.C. Section 7116 (Unfair Labor Practices) (A)(1) and (5) provides that:

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency...

(1) *to interfere with, restrain, coerce any employee in the exercise by the employee of any right under this chapter;...*

(5) to refuse to consult or negotiate with a labor organization as required by this chapter.

(Emphasis added).

The Union alleges in its grievance that management committed an unfair labor practice in violation of the Federal Service Labor Management Relations Act's duty to bargain in good faith. It contends that the Agency committed unfair labor practice by making unilateral changes in the working conditions when it realigned employees to the CPACs without first meeting its bargaining obligations with the Union. Since management's realignment in the instant case had a "substantial impact" on the affected employee's conditions of employment, the Agency was required to bargain with the Union over the realignment, the

Union insists.

This is disputed by the Agency, however, which insists that management briefed the Union about the transition and fully notified the Union of management's intent to rollout the implementation of the transition throughout all of the CPAC, and provided the Union with relevant briefing documents. While this initial transition was planned to begin with the VISN pilot, the Union was informed that management's plan was to first realign VISN 4, and then follow that up by extending it to each CPAC soon thereafter.

According to the Agency, the Union was fully apprised of management's plans, yet it failed to provide any feedback and failed to articulate any concerns about the transition. The Agency insists that it has fully met its bargaining obligation under the statute and under Article 47 of the parties' MCBA.

Based on the evidence and testimony presented at the hearing, the Arbitrator accepts that Agency management informed the Union at the initial briefing on June 10, 2019, that it was commencing a pilot program at VISN 4. While the Agency indicated that it planned at some point in the future to extend this realignment to all VISNs, there was no meaningful information shared about these future plans, the Arbitrator notes. Nor was any information on the scope or the timetable for any extension of the realignment program to other VISNs shared with the Union, the Arbitrator notes.

The 3-page briefing document that was provided to the Union certainly did not outline sufficient notice of the proposed changes planned by the Agency. It appears to the Arbitrator that the initial briefing on June 10, 2019, focused on the pilot program that was planned for VISN 4.

There was no notice provided and no information given to the Union concerning subsequent changes that might be extended to all non-MCFF employees, the Arbitrator finds. It appears that even the Agency was not fully aware of the nature and extent of the changes when it first conducted its initial briefing with the Union.

To the contrary, the evidence presented at the hearing suggests that the Agency planned to conduct the initial pilot program and, based on the success of that initial pilot program process, the realignment process would potentially be extended across the Agency. The Agency indicated that it would inform the Union when the pilot program was going to be extended, thereby suggesting that management expected bargaining with the Union prior to the pilot being extended across the VA.

Despite this, the Agency failed to notify the Union when it was planning to extend the pilot program and failed to provide the Union with an opportunity to bargain after more information became available at the end of the pilot program.

The evidence presented at the hearing suggests that the Union had agreed to allow management to try out some ideas during the pilot program and then, after the pilot program was complete, it expected the Agency to alert it to which ideas it was planning to implement on a permanent basis Agency-wide. It was at this point that the Union believed it would commence negotiations with the Agency, the Arbitrator notes.

The Arbitrator rejects the Agency's assertion that it fully briefed the was the Union about the realignment during the initial briefing and that it was the Union which, despite have the opportunity to bargain, chose to take no action to request bargaining. Such an interpretation has no credible basis, the Arbitrator finds. There is no evidence that the Union in any way waived its bargaining rights by failing to issue a demand to bargain, the Arbitrator concludes.

All the evidence indicates that the Agency had an obligation to notify the Union after it had completed the pilot program and to update the Union with information and details regarding any extension of the pilot. Instead of doing so, the Agency unilaterally decided to extend the pilot program across the Agency without first notifying the Union, the Arbitrator finds. No information beyond the

initial briefing document was ever provided to the Union and no timeline was ever detailed for the Union.

Agency management had an obligation to notify and bargain with the Union regarding the realignment of employees to the respective CPACs, but it inexplicably failed to provide any sort of information. The Agency's failure to provide sufficient notice about the changes and its decision to implement changes in employees' conditions of employment without bargaining with the Union was a violation of the statute and of the parties' MCBA, the Arbitrator concludes.

For the reasons outlined above, the Arbitrator finds that the Agency failed to provide sufficient notice of the changes in conditions of employment and failed to bargain with the Union over the realignment of VISNs to CPACs. By way of remedy, the Arbitrator directs the Agency to engage in retroactive bargaining with the Union. The Arbitrator shall retain jurisdiction should the parties have any difficulty in implementing the remedy aspect of the instant case.

Joshua M. Javits, ARBITRATOR

Date

