



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-10/29/2021

7H/00399071

Date: October 29, 2021

To: Denise Biaggi-Ayer
Executive Director
Office of Labor Management Relations
Denise.Biaggi-Ayer@va.gov
Sent via electronic mail only

From: Sarah Hasan, 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 VISN 4 Employees’ Bargaining Unit Status Without Satisfying Bargaining Obligations or 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”) for failing to provide adequate notice of proposed changes in conditions of employment impacting certain bargaining unit employees in the realignment of Veterans Integrated Service Network (“VISN”) 4 Clinical Resource Hubs and by removing them from AFGE’s 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 C.F.R. §2422.34(a), 5 U.S.C. Section §7116(a)(1), (5), and (8) (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

On September 14, 2020, John R. Bercik, Executive HR Specialist in VISN 4 notified the Union of VISN 4's intent to realign its Clinical Resource Hubs in Pittsburgh, PA and Wilmington, PA with its Clinical Contact Center in Butler, PA into one organizational structure directly under VISN 4. *See* Exhibits 1 and 2. According to this notice and attached memorandum, the realignment was to be effective November 1, 2020 and would “not result in any changes to the bargaining unit employees' job duties, work schedules, work locations, compensation, leave selections, overtime opportunities, performance standards/elements, or promotion/advancement potential,” though their supervisors would change. *See* Exhibit 1 (emphasis in original).

The VISN 4 Clinical Resource Hubs realignment actually became effective March 14, 2021 for the BUEs in the Pittsburgh Clinical Resource Hub and on April 25, 2021 for BUEs in the Wilmington Clinical Resource Hub. *See* Exhibit 3. These BUEs were dues-paying members of AFGE Local Unions 2028 and 342, respectively. Once the realignment was effective, the Department removed these BUE from the bargaining units of AFGE Locals 2028 and 342¹ and terminated their dues-withholding, leaving them without Union membership or representation. *Id.* To date, these employees are still deprived of Union membership and representation.²

By stripping AFGE BUEs of their right to be represented by the Union, the Department's changes had a substantial impact on the conditions of employment of these employees. It should be noted that these BUEs were not reclassified, nor were their duties changed in any way that would warrant their removal from the bargaining unit. Thus, the Department's removal of these BUEs from their respective bargaining units exceeded the scope of changes for which the Union was provided notice. In providing inadequate notice of these changes, the Agency failed to satisfy its bargaining obligations with the Union.

It is well-established that a union must be given adequate notice by agency management and an opportunity to request bargaining over the impact and implementation of changes in working conditions affecting bargaining unit employees. *See, e.g., General Services Administration and American Federation of Government Employees, AFL-CIO*, 15 FLRA 6 (1984). In interfering with the rights of employees to belong to the Union and failing to provide adequate notice and an opportunity to bargain prior to the implementation of the changes outlined here, the Agency committed unfair labor practices under 5 U.S.C. §7116(a)(1), (5) and (8). Additionally, Article 2 of the MCBA requires that the Agency 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 Agency also failed to comply with Article 2.

The Agency violated Article 47, Section 2, and Article 49, Section 4, which set forth the parties' responsibilities regarding mid-term bargaining at the national level, including, the Agency's obligation to provide advance written notice to the President of the NVAC, or her designee, of

¹ The Union reserves the right to supplement the list of impacted Locals, if needed.

² Subsequently, Local 2028 filed an unfair labor practice with the FLRA. AFGE also filed a unit clarification petition with the FLRA on or about August 23, 2021. These matters are pending before the FLRA.

changes in personnel policies, practices, or working conditions affecting the interests of two or more locals. Here, the realignment of VISN 4 Clinical Resource Hubs affected Locals 2028 and 342.

The Department's actions constitute additional violations of the MCBA. 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." 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). *See also* 5 C.F.R. §2422.34(a). Under Article 45, Section 8, 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. Here, the Union was **not** given predecisional involvement in the bargaining unit determinations of BUEs impacted by the VISN 4 Clinical Resource Hub Realignment. The BUEs were **not** retained in their former bargaining units pending a FLRA decision on the Union's CU petition that was filed. Furthermore, the Department is **not** collecting dues from these BUEs pending the FLRA's decision on the CU petition.

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 removing certain BUEs from AFGE Locals 2028 and 342 pursuant to the VISN 4 Clinical Resource Hub Realignment, the Department renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes.

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 Agency'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 C.F.R. §2422.34(a): requiring the Department to maintain the status quo, honor existing agreements, and fulfill all other responsibilities while a representation proceeding is pending;
- 5 U.S.C. § 7116(a)(1), (5), and (8): prohibiting the Department from interfering with the rights of employees to be represented by the Union, 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:

- Return to *status quo ante*, return impacted BUEs to their former local unions, and resume the dues deduction of impacted BUEs;
- To cease and desist from further implementation of the realignment of the VISN 4 Clinical Resource Hubs without first bargaining with the Union;
- To fully comply with its contractual obligations under Articles 1, 2, 3, 45, 47, and 49 of the MCBA, its regulatory obligations under 5 C.F.R. §2422.34(a), and its statutory obligations under 5 U.S.C. §7116(a)(1), (5) and (8);
- To distribute an electronic notice posting to all VISN 4 BUEs 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 employees under VISN 4's Clinical Resource Hubs Realignment;
- To make whole any AFGE Local Union that has, or will, fail to receive dues allotments due to the Department's unilateral removal of positions from the bargaining unit;
- To make-whole any bargaining unit employee adversely affected by the Agency's improper implementation of the changes, including back pay, interest, and attorney's fees;
- Agree to comply with any and all other relevant laws, regulations, customs, MCBA provisions, and past practices not herein specified; and
- 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,



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