



# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE

NG-2/9/22

**Date:** February 9, 2022

**To:** Denise Biaggi-Ayer  
Executive Director  
Office of Labor-Management Relations  
810 Vermont Avenue, NW  
Washington, DC 2042  
[Denise.biaggi-ayer@va.gov](mailto:Denise.biaggi-ayer@va.gov)  
*Sent via electronic mail only*

**From:** Alec Summerfield, 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 implementing ePerformance appraisal system in violation of law, policy, and contract

## 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”), 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 Agency for failing to satisfy bargaining obligations, unliterally implementing the Electronic Performance Appraisal System (“ePerformance”), and violating VA policy. To date, VA has failed to remedy this violation, and as such, continues to violate policy, contract, and law.

Specifically, the VA violated VA Directive 5013, Part 1, Section 8(h), Articles 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.

## STATEMENT OF THE CASE

### **Background**

ePerformance enables employees to review performance plans and complete performance appraisals in a web-based platform and also changes the way employees are notified of changes in performance standards and performance plans.

As part of the Agency's ePerformance deployment, it issued a document entitled "Electronic Performance Appraisal Process Flowcharts."<sup>1</sup> This document outlines the different steps for ePerformance appraisals. According to page two of the ePerformance flowcharts, an initial rating of less than fully successful is immediately elevated to the second line official who either concurs or does not concur with the initial rating. This part of the flowchart seems to align with the requirements of VA Handbook 5013/8. VA Directive 5013 (Performance Management Systems) establishes the Agency's performance management systems policies and procedures.

However, the ePerformance flowchart runs awry of Directive 5013 when it comes to the initial ratings that are fully successful or higher. Directive 5013 requires that the initial rater, "forward all appraisal forms to the Approval Official." The directive further requires that, "a list of fully successful and above ratings and recommendations for performance awards shall be forwarded at the same time." At this point, the approving official is required to review all ratings lower than fully successful and may review higher ratings at their discretion. While the ePerformance system is consistent with VA policy regarding ratings lower than fully successful, it contradicts the policy regarding higher ratings.

It is not apparent in the flowchart that approving officials receive all appraisal forms, as required by Directive 5013. This is an important step because approving officials have the discretion to increase fully successful ratings to excellent and excellent ratings to outstanding. This change in ratings can result in a higher financial award for the rated employee. Whether the approving official decides to review higher ratings is up to their discretion, but Directive 5013 requires that they have the option. Multiple AFGE Locals have confirmed that approving officials are not being provided with copies of all ratings, which prevents the employee from being considered for a higher rating and financial award in violation of Directive 5013. For example, employees at VA medical centers in Little Rock, Arkansas (AFGE Local 2054), and Indianapolis, Indiana (AFGE Local 609), were told that higher level review for ratings above minimally satisfactory were unavailable because of the limitations of ePerformance.

Further, the Agency's implementation of ePerformance constitutes a change in conditions of employment that triggered a duty to notify and bargain with the Union. By failing to do so here, the Agency violated Article 47 and 49 of the MCBA, which set forth the Agency's contractual mid-term bargaining obligations, and the Federal Service Labor-Management Relations Statute, which sets forth the Agency's statutory bargaining obligations. The failure to bargain in good faith is an unfair labor practice under 5 U.S.C. §7116(a)(1) and (5).

## **Violation**

By implementing an ePerformance system that does not allow the approving official to receive all appraisal forms and consider bargaining unit employees for awards and bonuses, the Agency violated and continues to violate:

- VA Directive 5013;
- Articles 47 and 49 of the MCBA;

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<sup>1</sup> A copy of this flowchart is attached as Exhibit A.

- 5 U.S.C. 7116(a)(1) and (5);
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

### **Remedy Requested**

- To cease and desist further implementation of ePerformance until the Agency ensures compliance with VA Directive 5013;
- To reappraise all bargaining unit employees who received an initial rating of fully successful or higher so that responsible approving officials can review the initial rating consistent with Directive 5013;
- To make whole any impacted bargaining unit employees, including back pay, interest, and attorney's fees;
- To fully comply with its contractual obligations to bargain in good faith under Articles 47 and 49 of the MCBA, as well as its statutory obligations under 5 U.S.C. §7116(a);
- To issue a remedial notice posting to all bargaining unit employees, via email, in recognition of its unfair labor practice;
- 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. If you have any questions, please contact the undersigned at AFGE Office of the General Counsel. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.



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

# **Exhibit A**

**VA**



U.S. Department  
of Veterans Affairs

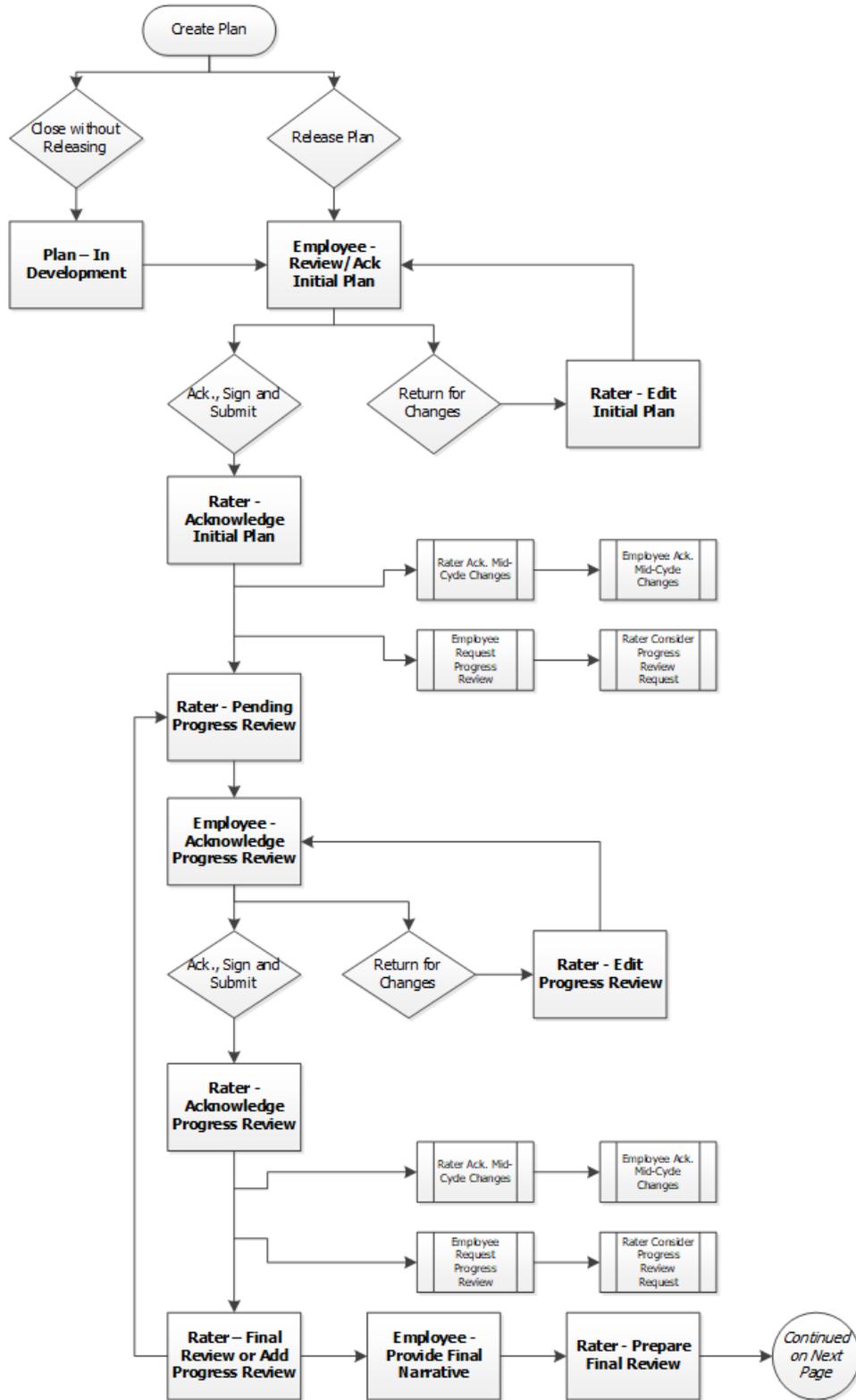
# **U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)**

## **Electronic Performance Management System ePERFORMANCE**

### **Electronic Performance Appraisal Process Flowcharts Version 1.3**

**July 2020**

**VA 0750 ANNUAL OR SPECIAL PERFORMANCE APPRAISAL PROCESS  
(SHEET 1 OF 2)**



**VA 0750 ANNUAL OR SPECIAL PERFORMANCE APPRAISAL PROCESS  
(SHEET 2 OF 2)**

