



Out of Many/One Union
AFGE NVAC/AFL-CIO

NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-4/27/22

Date: April 27, 2022

To: Denise Biaggi-Ayer
Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
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 violating law and contract by failing to bargain regarding VISN 8 Personnel Security Assistant Position Descriptions

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 unilaterally implementing a new performance plan and position descriptions for Personnel Security Assistants (“PSA”) employed in VISN 8. To date, VA has failed to remedy this violation, and as such, continues to violate policy, contract, government-wide regulations, and law.

Specifically, the VA violated Articles 2, 3, 47, 49, and the Duration of Agreement clause of the MCBA, 5 U.S.C. § 7116(a), and any and all other relevant articles, laws, regulations, 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

Articles 47 and 49 of the MCBA require that the Department provide reasonable advance notice to the Union prior to changing conditions of employment of bargaining unit employees as to provide the Union with sufficient information for the purpose of exercising its full right to

bargain. Notices of changes impacting two or more VA Locals requires notice to NVAC. The MCBA language is meant to prevent the Department from unilaterally changing the nature of an employee's position without first notifying the Union and bargaining, if requested. The Federal Service Labor-Management Relations Statute (Statute) similarly provides that an agency must notify and bargain in good faith with labor unions prior to changing conditions of employment.

Nonetheless, VISN 8 Chief of Personnel Security, Jonathan Villarreal, issued new PSA Fiscal Year 21 performance plans on February 18, 2022, without first consulting the Union. Mr. Villarreal circulated an email to NVAC District 5 Representative Tatishka Thomas indicating that the new performance plans would be adopted one duty station at a time. The new PSA performance plan increased the number of critical performance elements, added a 24-hour schedule requirement, and implemented an HR modernization initiative without a clear definition. Each of these features constitute a change in conditions of employment triggering a bargaining obligation with NVAC.

As required by the MCBA and Statute, any new or changed performance plan would be submitted to the Union, along with a copy of the current performance plan and position description, as well as "any and all information and/or material relied upon to propose the change(s) in conditions of employment." *See* Article 49, Section 4. However, none of this was provided to NVAC as to satisfy bargaining obligations. Consequently, the Union never had the opportunity to review these changes and demand mid-term bargaining.

Violations

By refusing to negotiate in good faith with the Union prior to implementing new position descriptions at the VISN level for PSAs, the Department committed an unfair labor practice under 5 U.S.C. § 7116(a)(5).

Additionally, 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, the Department also violated Article 2.

Further, 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 consult with the Union before implementing a new performance plan for VISN 8 PSAs, the Department renounced its commitments under Article 3 of the MCBA and triggered further collective bargaining disputes.

The Department also violated Articles 47, 49, and the Duration of Agreement clause of the MCBA, which sets forth the parties' mid-term bargaining obligations at the national level.

Remedy Requested

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

- To cease and desist the implementation of the new PSA performance plan and position description in VISN 8 until its bargaining obligations under the MCBA are met.

- To fully comply with its contractual obligations under Articles 2, 3, 47, and 49 of the MCBA, and its statutory obligations under 5 U.S.C. § 7116(a).
- To distribute an electronic notice posting signed by the VISN 8 Network Director to all VISN 8 PSAs, via email, concerning the Department's unilateral implementation of changes in conditions of employment in violation of the MCBA and federal law;
- To return to *status quo ante* until bargaining obligations are met;
- To make whole any PSA adversely affected by the unilateral implementation of the new position description;
- To comply with its obligations under federal law, regulations, and contract;
- 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.



Alec Summerfield
Staff Counsel, National VA Council
Office of the General Counsel
American Federation of Government Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001
tel: 202.639.6424
efax: 202.379.2928
alec.summerfield@afge.org

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



This form is to be used for non-supervisory Title 5/Hybrid Title 38 employees. Instructions for completing this form may be found at http://vaww.va.gov/OHRM/EmployeeRelations/ under the Performance tab. For additional information, see VA Handbook 5013, Part I. If additional space is needed for any item on this form, use page 6, Section I, or attachment pages.

SECTION A: PERFORMANCE PLAN AND APPRAISAL OF

EMPLOYEE'S NAME (Last, First, Middle Initial) POSITION TITLE, SERIES AND NUMBER PAY PLAN - GRADE DEPARTMENT/OFFICE SERVICE LOCATION (City, State) DATE ASSIGNED PRESENT POSITION PERIOD COVERED BY THIS PERFORMANCE PLAN SIGNATURE AND TITLE OF RATER PREPARING THIS PERFORMANCE PLAN DATE SIGNATURE OF EMPLOYEE DATE

SECTION B: PERFORMANCE PLAN

Each performance plan must include all elements that will be used to assign an overall rating. Performance plans must contain at least one critical and one noncritical element. Each critical and noncritical element usually contains three to five performance standards. See VA Handbook 5013 Part I for additional guidance regarding mandatory performance standards, and planning performance plans. Critical elements will be denoted by an asterisk (*).

PERFORMANCE ELEMENTS/PERFORMANCE STANDARDS

Element 1: Element 1: Personnel Security and Suitability - Security Assistant *

Description:

Personnel Security and Suitability (Critical)- Initiates, reviews and approves background cases for release to the Office of Personnel management in compliance with policies relating to completion of suitability investigations for non-sensitive and public trust positions. Responsible for tracking and reviewing data, completion of reports, maintaining databases and processing follow-up actions of various security related matters.

Standard 1: 1. Personnel Security Assistant

1a. Initiates background and re-investigations via OPM's eQIP system for prospective employees, selects forms to be completed by candidate, and ensures completion.

Fully Successful- no more than 3 errors per quarter where a background or re-investigation was not completed timely as determined by the supervisor.

1b. Tracking and Monitoring: Tracks all investigative documents (SAC results, Closed investigations, etc.), reviews contents and takes appropriate action or forwards to Specialist for action. Performs periodic audits of official personnel files and HR Smart to ensure investigative information is included and accurate.

Fully Successful- no more than 3 errors per quarter where documents were not forwarded for Specialist's review or personnel files and HR Smart updates were not completed timely as determined by the supervisor.

Must meet both standards in order to be fully successful.

Element 2: Element 2: Personnel Identification Verification (PIV) - Security Assistant *

Description:

SECTION B: PERFORMANCE PLAN

Personnel Identification Verification (PIV) (Critical)- Performs administrative tasks associated with the administration and issuance of PIV card. Performs functions associated with the daily operations to include serving as registrar and/or issuer and training sponsors on their roles and responsibilities. ** and supports the programming of PIV cards.

Standard 1: 2. Personnel Security Assistant

2a. Accurately enters and verifies identity of employee/contractor/volunteer/affiliate data into the PIV system and serves as sponsor and/or registrar.

Fully Successful- no more than 3 errors per quarter where the incumbent failed to properly identify the identity of an individual prior to entering into the PIV system or entered inaccurate data into the system as determined by the supervisor.

2b. Serves as PIV Issuer, performing PIV Card issuance and termination functions, PIN resets, and card accountability ensuring adequate inventory of supplies needed for program operation (cards, fingerprint supplies, etc.)

Fully Successful- no more than 2 instances of inadequate inventory or issuance errors per quarter as determined by the supervisor.

Must meet both standards in order to be fully successful.

Element 3: Element 3: Technical Knowledge and Skills - Security Assistant *

Description: Proficiency in the use of multiple computer applications (USAccess, CABS, PIV, eQIP, PDT, HR Smart, MS Office, USAS On-boarding, etc.) required to perform the functions of the position.

Standard 1: 3. Personnel Security Assistant

3a. Ability and understanding of the use of multiple platforms required to perform the functions of the position.

Fully Successful- No more than 2 instances per quarter where it was demonstrated that the employee failed to utilize the platforms appropriately as determined by the supervisor.

3b. Ability to accurately verify the identity of individuals prior to taking photographs or issuing PIV cards.

Fully Successful- No more than 2 instances where the employee failed to independently verify the identity of individuals utilizing acceptable forms of identification as determined by the supervisor.

Must meet both standards in order to be fully successful.

Element 4: Element 4: Customer Service - Security Assistant *

Description: Customer Service – Critical

Standard 1: 4. Personnel Security Assistant

Customer Service: The employee's relationship with supervisors, co-workers, and others, both within and outside HRM, are driven by the VA's ICARE values, consistently courteous and cooperative even in the face of unprofessional or discourteous conduct by others. They are positive and support the effective operation of HRM, the facility and Network operations. Differences of opinion are handled in a professional manner. Proactively interface with customers to provide timely, quality, and responsive service to customers. Anticipates and meets the needs of both internal and external customers and Veterans. Special projects are completed within acceptable quality levels and by assigned suspense dates resulting in increased efficiency of processes and positive impacts on customers. Advice is legally, ethically, and morally sound based on HR regulations, policies, procedures, case law, and customer expectations. Establishes strong collaborative relationships with working groups applying technical knowledge and/or experience to develop, change, or implement standard processes/practices to meet customer needs.

Fully Successful:

Has no more than 3 substantiated and recorded customer complaints in the performance year.

Has no more than 3 incidents where a customer's inquiry was not addressed within one working day or 24 hours.

SECTION B: PERFORMANCE PLAN

-or-

Fully satisfactory:

Employee consistently demonstrates the VA's ICARE values. Very few failures of the standard with all instances limited or minor and collectively or individually have no significant adverse impact on organizational or individual productivity or efficiency

Element 5: Element 5: HR Modernization - Security Assistant

Description: HR Modernization.

Standard 1: 5. Personnel Security Assistant

HR Modernization: - This year HR services will begin consolidating under the Network. As a dedicated and committed employee you will be expected to assist with the development and implementation of the consolidation. You will represent the Network with the utmost professionalism and provide extraordinary service to our customer to ensure their needs are met in staffing, employee relations, labor relations, classification, compensation, benefits and any other HR related service.

Fully Successful:

Adopt HR modernization concepts and planning. Serve on one or more teams within the network. Fully participate in modernization meetings. Participate in HR group discussions to enhance the program.

SECTION C: CHANGES TO PERFORMANCE PLAN *(Changes may be recorded anytime during the rating period.)*

ELEMENT TITLE

PERFORMANCE STANDARD(S)

SIGNATURE OF RATER

DATE (MM/DD/YYYY)

SIGNATURE OF EMPLOYEE

DATE (MM/DD/YYYY)

SECTION D: PROGRESS REVIEW

At least one progress review is required during the appraisal period. The employee must be informed of his/her level of progress as measured against the performance plan. Additional progress reviews may be documented in section I.

A progress review was conducted and discussed, and the employee's performance as of this date:

- Is considered Fully Successful or better.
- Needs improvement to be Fully Successful or better. *(See VA Handbook 5013, Part I, for additional information regarding addressing unacceptable performance.)*

SIGNATURE OF RATER

Electronically signed by:
Supervisory Personnel Security Specialist

DATE (MM/DD/YYYY)

09/13/2021

SIGNATURE OF EMPLOYEE

Electronically signed by:

DATE (MM/DD/YYYY)

09/13/2021

SECTION E: ACTUAL ACHIEVEMENT

List each ELEMENT from Section B of the employee's performance plan where indicated below, and indicate the overall level of achievement that best describes the employee's performance for each element. Do not indicate achievement for each individual performance standard. Justification, including specific examples of performance for each element that was rated Exceptional or Unacceptable, must be provided in the space below. Rating an element Exceptional means that Fully Successful performance standards have been significantly surpassed for ALL standards within that particular element. This level is reserved for employees whose performance in the element far exceeds normal expectations, and results in major contributions to the accomplishment of organizational goals.

Prior to assigning an Unacceptable level of achievement, ensure applicable policy requirements have been met as required in VA Handbook 5013, Part I.

ELEMENTS <i>(Use the same Elements as listed in Section B)</i>	LEVELS OF ACHIEVEMENT		
	EXCEPTIONAL	FULLY SUCCESSFUL	UNACCEPTABLE <i>(See instructions above)</i>
Element 1: Personnel Security and Suitability - Security Assistant *	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Element 2: Personnel Identification Verification (PIV) - Security Assistant *	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Element 3: Technical Knowledge and Skills - Security Assistant *	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Element 4: Customer Service - Security Assistant *	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Element 5: HR Modernization - Security Assistant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Use this section to provide justification, including specific examples of performance, for each element that was rated Exceptional or Unacceptable. (Specific achievements at the Fully Successful level are optional.)

SECTION F: OVERALL RATING

TYPE OF RATING

- ANNUAL RATING OF RECORD
 SPECIAL RATING OF RECORD
 SUMMARY RATING
 (POSITION CHANGES - EMPLOYEE OR RATER)

PERIOD COVERED BY THIS APPRAISAL *(Complete only for Special Rating of Record or Summary Rating.)*

FROM *(MM/DD/YYYY)* TO *(MM/DD/YYYY)*

NOTE: Recommended Performance Rating - Using achievement levels assigned in Section E and the criteria described below, check the appropriate rating.

PERFORMANCE RATING

- OUTSTANDING** - Achievement levels for all elements are designated as Exceptional.
- EXCELLENT** - Achievement levels for all critical elements are designated as Exceptional. Achievement levels for noncritical elements are designated as at least Fully Successful. Some, but not all, noncritical elements may be designated as Exceptional.
- FULLY SUCCESSFUL** - The achievement level for at least one critical element is designated as Fully Successful. Achievement levels for other critical and noncritical elements are designated as at least Fully Successful or higher.
- MINIMALLY SATISFACTORY** - Achievement levels for all critical elements are designated as at least Fully Successful. However, the achievement level(s) for one (or more) noncritical element(s) is (are) designated as Unacceptable.
- UNACCEPTABLE** - The achievement level(s) for one (or more) critical element(s) is (are) designated as Unacceptable.

SIGNATURE AND TITLE OF RATER

Electronically signed by:
 SUPERVISORY PERSONNEL SECURITY SPECIALIST,
 HUMAN RESOURCES MANAGEMENT

DATE *(MM/DD/YYYY)*

11/17/2021

SECTION G: HIGHER LEVEL REVIEW/APPROVAL

Required only for Minimally Satisfactory and Unacceptable ratings of record; unless organization has chosen to have higher level approval required for Outstanding ratings of record.


- Concur with recommended rating.
- Do not concur with rating. Approve rating of:

EXPLANATION FOR PERFORMANCE RATING CHANGE

SIGNATURE AND TITLE OF APPROVAL OFFICIAL

DATE *(MM/DD/YYYY)*

SECTION H: EMPLOYEE RECEIPT OF PERFORMANCE APPRAISAL

A copy of this performance appraisal was given to me. 

DATE *(MM/DD/YYYY)*

11/17/2021

SECTION I: ADDITIONAL COMMENTS/INFORMATION

Empty rectangular area for additional comments or information.

EXHIBIT B

From: Thomas, Tatishka
Sent: Wednesday, February 23, 2022 9:31 AM
To: Villarreal, Jonathan R. <Jonathan.Villarreal@va.gov>
Cc: Morgan, Kristina M. <Kristina.Morgan@va.gov>
Subject: RE: Bay Pines Personnel Security Assistant Performance Standards

This plan has never been provided to the Union. Please provide a copy of the PD.

Past practice is the current plan, proposed plan, and PD is submitted to the Union for review.

Can you provide the reason why all elements are marked as Critical except for one?

Define the word timely for each instance it is stated.

HR Modernization is what in accordance to the PD?

Is the position a 24 hour 7 day a week position? If not, remove the 24 hour requirement.

Past practice for Bay Pines is to provide what is required for exceptional for each element, please provide.

Tatishka Thomas, President
AFGE Local 548
AFGE/NVAC 5th District Representative
Office: 727-319-1548
Cell: 727-310-8892
Fax: 727-319-1176
Website: www.afge548.org
www.joinafge.org

From: Villarreal, Jonathan R. <Jonathan.Villarreal@va.gov>
Sent: Tuesday, February 22, 2022 9:38 AM
To: Thomas, Tatishka <Tatishka.Thomas@va.gov>
Subject: Bay Pines Personnel Security Assistant Performance Standards

Good Morning,

Since all Personnel Security Assistant FY 21 performance plans were previously adopted on a station by station basis I am having this conversation with the local AFGE Presidents. Please see the attached FY 21 performance standards that were previously approved.

Thank you,

Jonathan R. Villarreal, M.S.

Chief of Personnel Security
VISN 8 Suitability Coordinator
Federal Privacy Council Member
VISN 8 Network Office
Personnel Security Unit
Veterans Health Administration
Government Cell Phone: (720) 266-3635
Email: Jonathan.Villarreal@va.gov



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EXHIBIT C

From: Thomas, Tatishka
Sent: Wednesday, February 23, 2022 9:31 AM
To: Villarreal, Jonathan R. <Jonathan.Villarreal@va.gov>
Cc: Morgan, Kristina M. <Kristina.Morgan@va.gov>
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