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AFGE NVAC/AFL-CIO

NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-4/12/22

7H/00400753

Date: April 12, 2022

To: Denise Biaggi-Ayer
Executive Director
Office of Labor Management Relations
U.S. Department of Veterans Affairs
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 Querying
Bargaining Unit Employees’ Medical and Religious Justifications Against
Mandatory Covid-19 Vaccination

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 requesting additional extracontractual medical and/or religious information from AFGE Bargaining Unit Employees (“BUE”) who have requested reasonable accommodations from the Covid-19 Vaccine Mandate. To date, the Department has failed to remedy these violations, and as such, continues to violate the Master Agreement and federal law.

Specifically, the Department violated Articles 2, 3, 17, 18, 30, 47, and 49 of the MCBA; 5 U.S.C. §7116(a) (the “Statute”) 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

On August 13, 2021, the Department issued VHA Directive 1193, which required all Title 38 healthcare personnel were required to be vaccinated against COVID-19. This directive was replaced with VHA Directive 1193.01 on January 27, 2022, updating the submission process for vaccination information. Law, regulation, policy, and contract permit employees to seek exemptions from the Covid-19 vaccine requirement based on medical or religious grounds.

Under MCBA Article 30, Section 7B,

No employee shall be forced to participate in an immunization program if the employee has a **medical condition** which would be adversely affected by the immunization. A statement from a health care provider (as defined in Article 35 Section 16 E (6) (d)) that an immunization would adversely affect the employee's medical condition **is sufficient evidence of such a medical condition**. An employee may also receive an exemption based upon their religious beliefs. An employee's written statement that he/she has a **religious belief** that conflicts with the immunization **is sufficient to establish evidence of a religious belief**.

Therefore, while the right to seek reasonable accommodations is statutorily protected, the MCBA protects BUEs from unnecessary and additional scrutiny when they submit medical or religious justification against mandatory vaccination. Pursuant to Article 30, the Parties have agreed that a statement from a healthcare provider stipulating that the employee would suffer an adverse effect from vaccination, or an employee's own written statement of a religious belief, are sufficient to trigger a reasonable accommodation request. Reasonable accommodation requests containing these forms of proof must be processed by the Agency without further delay, questioning, or scrutiny.

On March 21, 2022, a BUE from AFGE Local 2401 (Northern Arizona VA Healthcare System), was sent a notification from a VISN 22 HR Specialist asking the BUE to ask their medical provider to complete VA Form VA-0857e "Request for Medical Documentation." *See* Exhibit 1. Although the BUE's medical provider had already submitted a statement, which the employee submitted in LEAF, stating that the employee suffered from a medical condition that would be adversely affected by the Covid-19 vaccine, as per the standard set forth in MCBA Article 30, Section 7B, the Department insisted that the medical provider include additional information in order for the employee's request for accommodation to be processed. The additional information requested included an explanation as to the "nature, severity, and duration of the impairment," "the activities the impairment limits," "the extent or degree to which the impairment limits an activity," "the reason the individual requires accommodation or the particular accommodation requested," and "how the accommodation will assist the employee in applying for a job, performing the essential functions of the job, or to enjoy the benefits of employment." *See* Exhibit 1.

Not only are these additional queries violative of MCBA Article 30, Section 7B, they attempt to seek information that has already been disclosed by the medical provider and is irrelevant to the specific request (such as what essential functions are limited by the employee's impairment). By ignoring the medical justification that has already been presented by the employee's healthcare provider, requiring completion of an arbitrary and arguably irrelevant

form, and delaying the processing of an employee's request for accommodation in the interim, the employee is essentially required to resubmit their request for accommodation, subjected to unnecessary and invasive questioning, and threatened with discipline for failing to comply with the Covid-19 vaccine mandate. In reality, the employee has submitted a request for reasonable accommodation and complied with the requirements of the Department's directive entitling their request for accommodation to be considered and processed. This unnecessary and excessive questioning of employees' medical and/or religious justifications against mandatory Covid-19 vaccination is also reported by other AFGE Local Unions, including but not limited to, AFGE Locals 1061 (Greater Los Angeles Healthcare System), 3669 (Minneapolis VA Medical Center), 2028 (Pittsburgh, PA), 910 (Kansas City VA Medical Center), and 2547 (Iowa City VA Healthcare System). This list is not exhaustive and the Union reserves the right to supplement this list.

Additionally, although this is a covered-by subject of bargaining, the Department failed to notify and provide an opportunity to bargain to the Union regarding a negotiable issue concerning a change to the terms and conditions of work, and instead, unilaterally implemented a change to the reasonable accommodation process for employees who seek medical and religious accommodations from the Covid-19 vaccine. In refusing to notify, consult, and negotiate in good faith with the Union prior to changing the accommodation process, the Agency committed an unfair labor practice under 5 U.S.C. §§7116(a)(1) and (a)(5). Further, the Agency violated Article 47, Section 2, which sets forth the Parties' responsibilities regarding mid-term bargaining at the national level, and Article 49 which requires the Department to provide reasonable, advance notice to the Union before changing conditions of employment.

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, the Agency also failed to comply with Article 2. Further, the Department violated Article 3 which encourages the parties to maintain a cooperative labor-management relationship based on mutual respect, open communication, consideration of each other's views, and minimizing collective bargaining disputes. The Department violated Articles 17 which entitles employees to be treated fairly and equitably and without discrimination in regard to their religious beliefs or disabilities. The Department violated Article 18 by failing to process employees' requests for reasonable accommodation. Finally, the Department violated Article 30, Section 7(B) which entitles BUEs to religious and medical exemptions from vaccination requirements during a pandemic by providing a medical provider's statement of an adverse effect resulting from potential vaccination or a statement by an employee about their religious beliefs. In committing these violations of contract, federal law, and Department-wide policy, the Agency 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 2 of the MCBA: requiring the Agency to comply with federal law and regulations;

- Article 3 of the MCBA: requiring the Agency to maintain an effective, cooperative labor-management relationship with the Union;
- Article 17 of the MCBA: requiring the Agency refrain from discriminating against employees due to their religious beliefs or disabilities;
- Article 18 of the MCBA: requiring the Agency to provide reasonable accommodations to employees;
- Article 30 of the MBCA: requiring the Department to provide medical or religious exemptions against vaccination requirements during a pandemic;
- Article 47 of the MCBA: requiring the Department to notify and bargain with the NVAC over proposed changes in personnel policies, practices, or working conditions affecting two or more local unions;
- Article 49 of the MCBA: requiring the Department to provide reasonable, advance notice and bargain with the Union prior to making changes in conditions of employment;
- 5 U.S.C. §§7116(a)(1) and (a)(5): requiring the Agency to consult and negotiate in good faith with the Union;
- Any and all other relevant articles, laws, regulations, customs, 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 the *status quo ante* and immediately cease and desist the requirement that BUEs resubmit their reasonable accommodation requests and/or provide any additional information beyond what is required by MCBA Article 30, Section 7B. Employees who have already submitted statements under MCBA Article 30 and submitted reasonable accommodation requests in LEAF are entitled to the processing of their requests immediately;
- Fully comply with its contractual obligations under Articles 2, 3, 17, 18, 30, 47 and 49 of the MCBA; and its statutory obligations under 5 U.S.C. §7116(a);
- To make-whole any bargaining unit employee injured by the Agency's unlawful additional query of their medical or religious justification against Covid-19 vaccination;
- Distribute an electronic notice posting, signed by the Secretary, to all bargaining unit employees concerning the Agency's unfair labor practice in requiring employees to resubmit their requests for accommodation and/or justification for those requests and by changing conditions of employment without first notifying and bargaining with the Union;
- Provide mandatory training to responsible management officials concerning the Reasonable Accommodation Process and associated obligations in the MCBA and VA policy;
- Agree to comply with any and all other relevant articles, laws, regulations, customs, 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. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.

Submitted by,



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