



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE NG-9/14/22

Date: September 14, 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 dress code changes in VANIHCS

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 dress code in violation of an agreement between the Department and the Union regarding the Dress and Personal Appearance Statement of Policy (“SOP”) for the VA Northern Indiana Health Care System (“VANIHCS”). 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, a June 7, 2022 Memorandum of Understanding (“MOU”), 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.

On May 25, 2022, VA Senior Strategic Business Partner, Kenneth Hill, and NVAC District 6 Representative, Willie Haywood, met via Microsoft Teams and agreed to two provisions regarding the dress code SOP for VANIHCs. Exhibit A. This Agreement was memorialized in the June 7, 2022, MOU. *Id.* It was agreed upon that the SOP would be returned to the local committee for additional review and changes as deemed appropriate. *Id.* The parties also agreed that VANIHCs would invite union representatives from AFGE Locals 1020 and 1384. *Id.* At the core of the agreement was the idea that a joint labor-management subcommittee would meet to produce a dress code for impacted bargaining unit employees.

Nonetheless, the VA implemented its own dress code before the local committee had a chance meet and create a mutually beneficial dress code. This is a clear failure by the VA to bargain in good faith; further, the VA's decision to unilaterally implement a dress code after agreeing to bargain on the issue is a violation of the MCBA and repudiation of the June 7, 2022, agreement.

Violations

By implementing a new dress code for all VANIHCs employees after agreeing to meet in a local committee with Union leadership, the Department committed an unfair labor practice under 5 U.S.C. § 7116(a)(5). The Department committed multiple unfair labor practices by failing to bargain in good faith and repudiating an existing agreement.

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 implementing a dress code without meeting with the Union, the Department renounced its commitments under Article 3 of the MCBA and triggered further collective bargaining disputes.

The Department also violated the June 7, 2022, MOU, as well as Articles 47, 49, and the Duration of Agreement clause of the MCBA, which set 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 a VANIHCs dress code until its bargaining obligations under the MCBA are met.

- To fully comply with its contractual obligations under the June 2022 MOU, 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 VA Senior Strategic Business Partner, Kenneth Hill 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 rescind any discipline or adverse actions issued against employees for violation of the new dress code;
- To make whole any VA employee affected by the unilateral implementation of the new dress code, including back pay, interest, and attorney's fees;
- 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
Willie Haywood, District 6 Representative, AFGE/NVAC
Thomas Dargon, Jr., Supervisory Attorney, AFGE/NVAC

EXHIBIT A



DEPARTMENT OF VETERANS AFFAIRS VA Northern Indiana Health Care System

Fort Wayne Campus:
2121 Lake Avenue
Fort Wayne, IN 46805-5100

Marion Campus:
1700 East 38th Street
Marion, IN 46953-4589
In Reply Refer to: M05

Date: June 7, 2022

From: Employee and Labor Relations, VA Northern Indiana Health Care System

Subj: AFGE Demand to Bargain, SOP Dress and Personal Appearance

To: Willie E. Haywood, AFGE Union Representative
Tony Pennington, AFGE Local 1020 President
Gwendolyn Adamas, AFGE Local 1384 President

1. On May 9, 2022, the AFGE Council #53 filed a demand to bargain with Acting Director Jennifer DeFrancesco of the VA Northern Indiana Health Care System (VANIHCS) on the proposed VANIHCS SOP "Dress and Personal Appearance."
2. On May 25, 2022 Senior Strategic Business Partner Kenneth Hill and Willie Haywood AFGE National Representative met via teams and agreed to the following:
 - a. The SOP "Dress and Personal Appearance" will be returned to the local committee for additional review and changes as deemed appropriate.
 - b. VANIHCS will invite and include a representative from AFGE 1020 and AFGE 1384 in committee meetings to review the above stated SOP.