

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-9/15/2022

7H/00402190

Date: September 15, 2022

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 Failing to Comply with Law and Contract By Unilaterally Installing and Using Telesitters to Monitor Employees

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 unilaterally installing and using “Telesitter” monitors in Community Living Centers (“CLC”) in Veterans Health Administration (“VHA”) facilities to monitor employees and veterans. 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, 47, 49 and 50 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 24, 2022, the Salem VA Medical Center began using video “tele-sitters” in its CLCs. *See* Exhibit 1. These Telesitters consist of a mobile, wheeled unit housing a camera and audio system, as well as a ceiling mounted unit with its own audio and video components. *See* Exhibit 2, p. 7. The implementation of Telesitters is designed to be progressive, beginning in the highest fall-risk areas first, to include CLCs, acute psychiatric patients, acute medical patients, and the emergency department. Exhibit 2, p. 2.

According to the VA, Telesitters purport to monitor patients in an inpatient setting, providing audio and video feedback on a continuous basis, twenty-four hours a day. Exhibit 2, pp. 5, 8. Telesitter feedback is monitored by trained Monitors who can communicate directly with patient and staff through the Telesitting devices, and who can call for additional staff to assist a patient when the need arises. Exhibit 2, p. 5. Trained Monitors could potentially monitor up to 16 veterans at a time through Telesitters. *Id.*

Among VA’s purported goals, one is to “[e]nhance the nurse experience and reduce nurse frustration.” Exhibit 2, p. 3. However, implementation of the Telesitting Program affects all medical staff and providers, requires additional training to understand the devices and technology that were installed, changes in how and how often nurses use paging technology in order to be reached by the Monitors or other nursing staff, and changes to how and when nurses notify other staff when they are taking breaks. Exhibit 1. Furthermore, the Telesitters are monitoring and surveilling staff on a continuous basis, whereas nurses and providers were not previously subject to continuous video or audio monitoring in patient rooms. This additional and continuous surveillance of staff has the potential to increase rates of discipline now that staff can be monitored remotely and there is an eyewitness, notably without a complete view, to every conversation and interaction a nurse may have with a patient. It is now an added responsibility of a nurse or provider to tell the remote Monitor to engage a privacy screen when providing personal care to a patient or discussing a personal, medical, or sensitive matter with a patient or their family. In a scenario where the Monitor did not hear the nurse, or a private disclosure is made by a patient spontaneously, staff are unreasonably and unnecessarily exposed to privacy-related violations and discipline.

Telesitters are reportedly being used at several VA facilities, thereby changing the terms and conditions of work for AFGE bargaining unit employees (“BUE”). Multiple AFGE Locals allege that Telesitters have been installed in their facilities, including AFGE Locals 1739 (Salem, VA), 1738 (Salisbury, NC), and 2198 (Beckley, WV). These are representative examples of impacted AFGE Locals, and the Union reserves the right to supplement this list. The Department implemented the Telesitting Program without first notifying and engaging in bargaining with the Union.

By and through its actions, the Department failed to satisfy its bargaining obligations with the Union regarding the Telesitting Program and its uses, which resulted in a change to the terms and conditions of work, and instead, unilaterally implemented a change that alters the day-to-day operations of healthcare personnel across the VA. In refusing to negotiate in good faith with the Union prior to imposing this requirement the Agency committed an unfair labor practice under 5 U.S.C. §§7116(a)(5) and (a)(8). 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 as set forth above, 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 Article 17 which requires the Department to safeguard employees' privacy interests in the workplace and refrain from using recording devices without the consent of employees. Finally, the Department violated Article 50 by failing to negotiate with Local Unions over the impact and implementation of the Telesitting Program. In committing these violations of contract and federal law, 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: entitling employees to privacy and to be recorded only with their consent;
- 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;
- Article 50 of the MCBA: requiring the Department to further negotiate with Local Unions on the impact and implementation of covert electronic camera surveillance;
- 5 U.S.C. §§7116(a)(5) and (a)(8): 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 using the Telesitting Program;
- Engage in bargaining over the Telesitting Program;

- Fully comply with its contractual obligations under Articles 2, 3, 17, 47, 49 and 50 of the MCBA and its statutory and regulatory obligations under 5 U.S.C. § 7116(a);
- Distribute an electronic notice posting, signed by the Under Secretary for Health, to all bargaining unit employees concerning the Agency's unfair labor practice by changing conditions of employment without first notifying and bargaining with the Union;
- Rescind any disciplinary action taken against AFGE BUEs in connection with the unilateral use of the Telesitting Program;
- Provide make-whole relief to any AFGE BUE adversely affected by the unilateral use of the Telesitting Program, including back pay, interest, and attorney's fees;
- 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

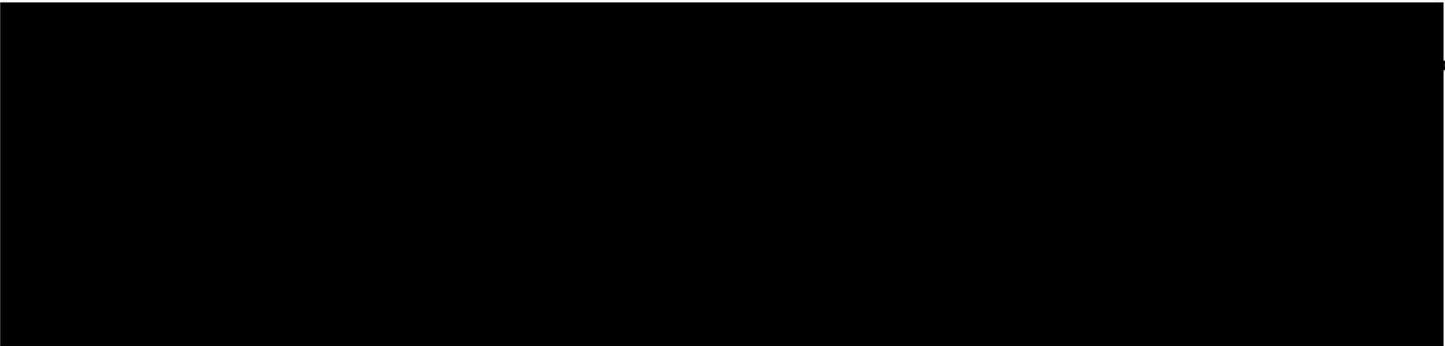
This is a National Grievance, and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions, please contact the undersigned at the AFGE Office of the General Counsel. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.

Submitted by,



Sarah Hasan
Staff Counsel, National VA Council
AFGE, AFL-CIO
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Washington, DC 20001
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Fax: 202-379-2928
hasans@afge.org

cc: Thomas McGuire, Deputy Director, OLMR
Donald Stephen, Staff Director, OLMR
Roy Ferguson, Director, Staff Operations, OLMR
Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Thomas Dargon, Jr., Supervisory Attorney, AFGE/NVAC



From: Gulotta, Georgine <Georgine.Gulotta@va.gov>

Sent: Monday, August 22, 2022 6:49 AM

To: VHASAM 2-3 NA <VHASAM23NA@va.gov>; VHASAM 2-2 LPN <VHASAM22LPN@va.gov>; VHASAM 2-2 RN <VHASAM22RN@va.gov>; VHASAM 2-3 LPN <VHASAM23LPN@va.gov>; VHASAM 2-3 RN <VHASAM23RN@va.gov>

Subject: UPDATE

Hi All,

This Wednesday August 24th, 2022 we go live with our tele-sitter monitor.

It is now more vital than ever to wear your VOCERA at all times when on duty.

The tele-sitter monitor relies upon the ability to call nursing staff via Vocera when monitored residents are in need. When you leave for lunch or a break you will need to let the tele-sitter tech know who is covering for you during this time so they can contact the person covering for you.

Please let the charge nurse and/or the nurse managers know if you do not have a Vocera that is available for you to use. Please do not return them to the charger until your tour is over and you have completed your handoff.

Thanks,

Georgine & LeAnne

Community Living Center 2-3

Nurse Manager

540 982-2463 X2404

Salem VA Medical Center (658)

1970 Roanoke Blvd.

Salem, Virginia, 24153

Your life only gets better when you get better!

SALEM VAHCS TELESITTER PROJECT

SALEM VAHCS COMMUNITY LIVING CENTER (CLC)

SALEM, VIRGINIA

APRIL 2020

PROPOSAL

- Implement a remote monitoring Telesitter Program at the Salem Veteran Affairs Health Care System
- Progressive implementation beginning in highest fall-risk area:
 - The Community Living Center
 - Acute Psych
 - Acute Medical
 - Emergency Department

PROGRAM GOALS

- Reduce/prevent falls & other adverse events (e.g. elopements, suicides, violent events)
- Improve Veteran & staff safety
- Increase Veteran & family satisfaction w/improved response time to Veterans' needs
- Enhance the nurse experience and reduce nurse frustration
- Provide alternative, fiscally responsible method of monitoring at-risk Veterans
- Reduce sitter use
- Prevent/reduce elopement
- Reduce PPE usage
- Increase number of Veterans directly observed 24/7/365

ADVANTAGES OF TELESITTER USE

- Reduce risk of potential falls
- Slow/prevent/reduce adverse events (e.g. elopements, suicides, violent events)
- ROI - Investment could lead to a substantial reduction in healthcare spending (1:1 sitter @ \$15/hr. vs Telesitter @ \$3/hr.)
- Conserve nursing resources
- No Provider order required, NURSE DRIVEN
- Reduced PPE usage by providing visualization of patients on isolation precautions
- Continuous virtual monitoring is ideal for Veterans with agitation, confusion or impaired judgement
- Evidence-based support of telesitter usage: 30+ case studies - 4 result types (ROI, quality and patient/caregiver experiences) all with positive results

THE TELESITTER UNIT

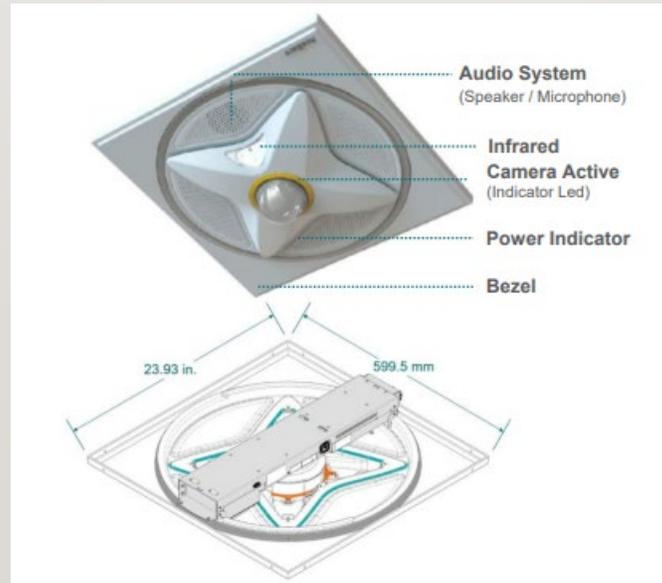
FUNCTIONALITY

- 24/7 remote monitoring of & communication w/high fall risk Veterans
- 2-way camera that zooms 24X, tilts & pans 360°
- 2-way audio speaker thru which Monitor can speak directly to Veteran or play automated messages in male/female voice in 30 languages w/translation window
- Staff alarms in case patient does not listen to monitors' instructions/messages
- Video/audio privacy curtain w/timer allows for caregiver to time-out video feed, for a specified time, to provide personal care
- Automatic day/night modes. Night mode is triggered by ambient room light which triggers infrared illuminator so Veteran can be seen in total darkness.
- Trained monitors can monitor up to 12-16 Veterans at a time
- Allows nursing staff to stay on the floor, where needed & utilize technology to monitor Veterans that require close monitoring
- Mobile device on wheels for flexibility & quick transport to rooms where needed

THE TELESITTER UNIT

SYSTEM COMPONENTS

- Telesitter Monitor
 - Mobile unit or
 - Ceiling/Wall (ceiling tile or drywall) mounted units
- Real Time Dashboard Monitors
- Data Analytics through ORNA (Online Reporting of Nursing Analytics)
 - Combines Technology, Clinical Workflow and Comparative Data Analytics
 - Hospitals can run comparisons (benchmark w/other user systems nationwide) on unit utilization, alarm rates, monitor staff interventions, effectiveness of monitor tech interventions and bedside staff responsiveness



TELESITTER MOBILE UNIT & CEILING MOUNTED UNIT

HEALTHCARE SYSTEMS USING TELESITTER PROGRAM



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