



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-10/21/2022

Date: October 21, 2022

To: Denis Biaggi-Ayer
Executive Director
Office of Labor Management Relations
U.S. Department of Veterans Affairs
Denise.Biaggi-Ayer@va.gov
VALMRLitigation@va.gov
Sent via electronic mail only

From: Ibidun Roberts of Roberts Labor Law and Consulting, L.L.C., on behalf of National Veterans Affairs Council (#53) (“NVAC”), American Federation of Government Employees, AFL-CIO (“AFGE”)

RE: **National Grievance against the Department of Veterans Affairs for its failure to approve LEAP pay for bargaining unit employees selected for promotion which included entitlement to LEAP pay and then retaliating against certain bargaining unit employees by cancelling their promotion.**

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” or “Master Agreement”), 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 agent on behalf of the U.S. Department of Veterans Affairs (“VA,” “Agency,” or “Department”) for its failure to pay LEAP payments for bargaining unit employees selected for promotion which included entitlement to LEAP pay and then retaliating against certain employees by cancelling their promotion.

Specifically, the VA violated Articles 2, 23, and 49 of the MCBA, 5 U.S.C. §7116(a)(1) and (2), 5 U.S.C. §2302(b)(9)(A)(ii), and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On December 9, 2021, the Department announced that it had approved plans to realign the structure of its police force. Part of the realignment was to transition Detectives to Criminal Investigators and the authorization of Law Enforcement Availability Pay (“LEAP”).



Facilities began posting vacancy announcements for the Criminal Investigator positions. Bargaining unit employees applied for and were selected for Criminal Investigator positions. As part of their selection, some employees received a salary increase, while others took a small pay cut; but all were entitled to LEAP.

LEAP is a type of premium payment authorized for employees who meet the eligibility requirements in 5 U.S.C. §5545a and 5 C.F.R. §550.181. It is payable to criminal investigators who meet the definition of law enforcement officers (“LEO”) to ensure their availability for unscheduled duty exceeding a 40-hour work week. It is a premium payment that is exclusively for unscheduled duty hours.

On January 10, 2022, VA issued its policy concerning how it would administer LEAP. The policy explicitly authorized the payment of LEAP at the national level.

However, on a continuing and ongoing basis, the Department has failed to pay the selected bargaining unit employees commensurate with their promotions.

Additionally, in Greater Los Angeles, the Department has cited to issues with determining the process for annual approval of LEAP as its reason for failing to pay the premium. However, bargaining unit employees were told that upon the correction to the “calculation issue,” they would receive back pay. Instead, after bargaining unit employees grieved the failure to receive the pay locally, the Department rescinded their promotions.

The Union has preliminarily identified affected employees in Long Beach, Seattle, Greater Los Angeles, and Salt Lake City. However, the Union reserves the right to include all bargaining unit employees affected by the grieved conduct.

Violations

By failing to fulfill its contractual and statutory obligations, the Department violated, and continues to violate, the following:

- Article 2 of the MCBA: requiring compliance with all federal statutes and governmentwide regulations;
- Section 12 of Article 23 of the MCBA: requiring that: when a selection is made, the Agency must ensure that appropriate personnel forms are processed; the effective date will be the first day of the pay period in which the employee is scheduled to report; and, if an employee is selected, has accepted the offer, and a reporting date has been established, that an untimely SF-52 will result in the action being made retroactive to the reporting date;
- Article 49 of the MCBA: which requires that the parties have due regard for the obligations imposed by 5 U.S.C. Chapter 71;
- 5 U.S.C. §7116(a)(1) and (2): prohibiting the Agency from discriminating against employees for exercising any right under the Federal Sector Labor Management Relations Statute;

- 5 U.S.C. §2302(b)(9)(A)(ii): prohibiting the taking of any personnel action against an employee for the exercise of a grievance right; and,
- Any other law, rule, regulation, or Master Agreement provision not herein specified.

Remedies Requested

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

- Retroactive promotion for all affected bargaining unit employees;
- To make whole any bargaining unit employee affected by the Department's violations;
- To pay reasonable attorney's fees; and,
- 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. Ibidun Roberts of Roberts Labor Law and Consulting, L.L.C., is the designated representative for this National Grievance. If you have any questions regarding this National Grievance, please contact her at (202) 235-5026 or iroberts@robertslaborlaw.com.

Submitted by,



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cc: Alma L. Lee, President, AFGE/NVAC
Bill Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
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