



# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE NG-2/13/2023

**Date:** February 13, 2023

**To:** Denis Biaggi-Ayer  
Executive Director  
Office of Labor Management Relations  
U.S. Department of Veterans Affairs  
[Denise.Biaggi-Ayer@va.gov](mailto:Denise.Biaggi-Ayer@va.gov)  
[VALMRLitigation@va.gov](mailto: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 unilateral implementation of a change to arbitration procedures by refusing to schedule arbitration hearings until arbitrator vendorization is complete.

### 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 unilateral implementation of a change to the arbitration procedures outlined in Article 44 of the Master Agreement and without fulfilling its bargaining obligations.

Specifically, the VA violated Articles 2, 47, and 49 of the MCBA, 5 U.S.C. §§ 7116(a)(1), (5) and 7121(b) and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

### STATEMENT OF THE CASE

#### **Background**

The Department, through its attorneys and Human Resources representatives, have implemented a practice of refusing to schedule arbitration hearings until the selected arbitrator’s vendorization process is complete. The Union is aware of this occurring in arbitration cases

with AFGE Locals 17 and 2778. However, this grievance includes any Locals affected by this practice.

For example, in FMCS Case No. 231205-01582 between AFGE Local 2778 and the Atlanta VA Health Care System, Arbitrator Harry Mason sought the parties' availability for a hearing on December 13, 2022. On January 13, 2023, Arbitrator Mason again checked in on the scheduling of the hearing. That same day, Human Resources Specialist, Brittany Cephas-Watts, responded, "We are currently working to ensure a date is agreed upon as soon as the vendorization is complete." Ms. Cephas-Watts' email was the first time the Union learned that the Department was waiting for vendorization completion to schedule the hearing. In follow up communications with the assigned Department attorney, Laura Taber-Baggio (formerly *Kempin*), the Department continued to refuse to participate until vendorization was complete and stated that the Department could wait six months before scheduling the hearing. Ultimately, the Department did not provide dates for availability until approximately two months after the arbitrator's request.

Another example, in FMCS Case No. 220729-08065 between AFGE Local 17 and the Board of Veterans Appeals, Arbitrator Eric Fine was selected by the parties on August 10, 2022. Department attorney, Keta Barnes, and HR representative, Melissa Duquin, refused to participate in scheduling the hearing until late November 2022.

Article 44 of the Master Agreement does not provide for delays in scheduling due to vendorization completion. The Union has previously worked with the Department to resolve arbitrator payment and procedure issues, resulting in an MOU in 2018. See attachment. That MOU allows for the selection of a new arbitrator if the selected arbitrator refuses to comply with VA's internal requirements. However, the selected arbitrators have not refused to be comply and were, in fact, participating in VA's vendorization process. Yet, the Department has refused to participate in the scheduling of arbitration until the vendorization process was complete, which goes beyond the agreed upon process in the MOU. Unfortunately, the Department's unilateral practice has delayed the scheduling of arbitrations for months.

Despite the Union's cooperation with the Department to resolve issues as demonstrated by the MOU, the Department has continued to engage in conduct that has made it notorious for causing issues with arrangements for arbitrators. In addition to the impact on the Union, the Department's conduct also impacts the Federal Mediation and Conciliation Service. FMCS is routinely contacted to assist the Union in gaining the Department's compliance with the Master Agreement. The Union is also forced to file unfair labor practice charges and grievances to obtain compliance. The Department's conduct results in less arbitrators being willing to accept cases with the Department as a party; uncomfortable communications from arbitrators in pending cases; and, unnecessary delays in arbitration proceedings.

Additionally, the Department's change to the arbitration process, a mandatory subject of bargaining, was made without notice and bargaining with the Union.<sup>1</sup> Article 49, Section 4 of

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<sup>1</sup> Notably, the Union has previously grieved unilateral changes to the grievance and arbitration procedure from the Department's attorney's office. Unfortunately, the Department continues to allow such changes subverting the requirements of the Master Agreement and the law.

the Master Agreement requires that the Department notify and bargain with the Union over changes to conditions of employment. Notice must be given *prior to* the implementation of such changes. If the Union elects to bargain over the proposed changes, the parties must bargain in good faith. The procedures for mid-term bargaining are set forth in Article 47 of the Master Agreement. The Federal Service Labor-Management Relations Statute provides the same requirement and makes it an unfair labor practice to fail to bargain in good faith with the Union. *See* 5 U.S.C. §7114(a)(4); §7116(a)(1) & (5). The Department did not notify the Union as required by the Master Agreement and federal law and instead unilaterally implemented the changes to the arbitration procedure discussed above. By doing so, the Department has failed in its obligation to bargain in good faith with the Union over changes to conditions of employment.

### **Violations**

The Department violated the requirements of Article 44, the MOU, and expeditious processing requirements in the Statute. Additionally, the Department failed to provide the Union with any notice concerning this change to conditions of employment and failed to provide the Union an opportunity to negotiate over the change.

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;
- Article 44 of the MCBA: prescribing the arbitration procedures between the parties;
- Article 47 of the MCBA: requiring notice of changes affecting the interests of two or more locals to the NVAC President or designee;
- 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 (5): requiring the Agency to consult and negotiate in good faith with the Union;
- 5 U.S.C. §7121(b): requiring the expeditious processing of grievances; 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:

- To return to the *status quo ante*;
- To cease and desist any implementation of the practice described above;
- To cease and desist further violations of the MCBA, MOU, and the FSLMRS;
- To post a notice to all AFGE bargaining unit employees via electronic mail signed by the highest appropriate VA official acknowledging the Department's

illegal conduct and affirming its obligations under the Statute and the Master Agreement;

- To make whole the Union and any employee affected by the Department's violations; 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](mailto:iroberts@robertslaborlaw.com).

Submitted by,



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Columbia, MD 21046  
(202) 235-5026  
(202) 217-3369 (fax)

Enclosure

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

**SETTLEMENT AGREEMENT**  
**Between**  
**DEPARTMENT OF VETERANS AFFAIRS**  
**And**  
**NATIONAL VETERANS AFFAIRS COUNCIL,**  
**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**National Grievance – 4/25/13**  
**Arbitration Fees & Procedures**

**I. Introduction**

The National Veterans Affairs Council, American Federation of Government Employees, AFL-CIO (“Union”) and the Department of Veterans Affairs (“VA” or “Agency”) (collectively referred to as “the Parties”) hereby agree to settle all disputes arising out of the Union’s National Grievance, dated April 25, 2013, regarding the payment of arbitrator fees and compliance with arbitration procedures set forth in Article 44 of the 2011 Master Agreement.

**II. Terms of the Settlement**

- A. By execution of this Settlement Agreement (hereinafter referred to as “the Agreement”), the Union voluntarily withdraws its National Grievance, dated April 25, 2013, and waives any and all actions, claims, complaints, grievances, appeals, or proceedings of whatever nature, arising from the allegations contained in the National Grievance, with the exception of any grievances that may arise by reason of breach of any term of this Agreement.
- B. The Agency agrees to fully comply with Article 44, Section 2(D) of the Agreement and remit payment to arbitrators in a timely manner.
- C. As of the date of this Agreement, the Agency requires, as a matter of policy, that arbitrators complete VA Form 10091 (VA-FSC Vendor File Request Form) and be entered into the System for Award Management (SAM) prior to receiving payment for arbitration services rendered. If the Federal Mediation and Conciliation Service (“FMCS”) appoints an arbitrator selected by the parties in accordance with Article 44 of the Agreement, and that arbitrator later refuses to complete VA Form 10091 or otherwise comply with the Agency’s internal requirements, the following procedures will apply:
  - a. Within fourteen calendar days of receiving the arbitrator’s written refusal to comply with the Agency’s internal requirement(s), the Agency will request a new panel of arbitrators from FMCS. The Agency will bear the cost of this request.
  - b. The procedures set forth in Article 44, Section 2 of the Agreement will apply to the selection of a replacement arbitrator and the scheduling of the hearing.

c. If an arbitrator refuses to comply with the Agency's internal requirements and charges a fee or penalty related to the cancellation of a hearing, the Union will not be responsible for any portion of that cost.

D. The procedures set forth in this Agreement will apply to grievances filed at both the local and national level.

**III. Stipulations**

A. The Parties have entered into this Agreement freely and voluntarily.

B. This Agreement does not constitute an admission of guilt, faulty, or wrongdoing by either party.

C. The obligations of the Parties specific above constitute consideration sufficient to render this Agreement enforceable by either party.

D. This Agreement shall not serve as precedent for resolving any other complaints, grievances, appeals, or actions that may be filed.

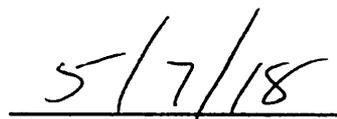
E. This Agreement constitutes the entire understanding between the Parties regarding the resolution and settlement of the National Grievance, dated April 25, 2013, and there are no other terms or commitments, verbal or written, regarding the settlement of the National Grievance.

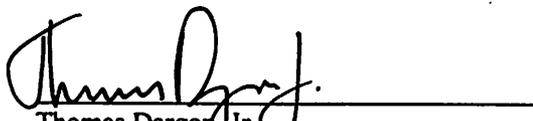
F. Either party may bring a claim in the form of a grievance arising from the breach of any term of this Agreement.

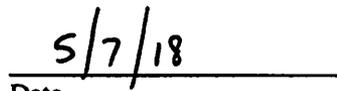
G. This Agreement may not be modified, except by a written agreement signed by the Parties.

**For the Union,**

  
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Mary-Jean Burke  
Chair, Grievance & Arbitration Committee  
National VA Council, AFGE

  
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Date

  
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Thomas Dargatzis, Jr.  
Staff Counsel, NVAC  
AFGE, AFL-CIO

  
\_\_\_\_\_  
Date

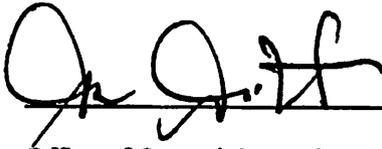
**For the Agency,**



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Office of Labor-Management Relations  
Department of Veterans Affairs

5/2/2018  
Date



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Office of General Counsel  
Department of Veterans Affairs

5/3/2018  
Date