



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-3/28/23

Date: March 28, 2023

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: Lynn Alexis, 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 improperly distributing and assigning overtime opportunity

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 Department of Veterans Affairs (“Department”), (collectively, “the Parties”) for its improper distribution and assignment of overtime opportunities for Medical Support Assistant staff (“MSA”), in the Clinical Contact Centers (“CCC”) as within the Veterans Integrated Services Network (“VISN”) 20, in violation of the MCBA. To date, the Department has failed to remedy this violation, and as such, continues to violate policy, contract, government-wide regulations, and law.

Specifically, the Department violated Articles 2, 21, 49 of the MCBA and 5 U.S.C. § 7116(a)(5), 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 or about February 27, 2023, the Union became aware that on an ongoing and continuing basis, the Department has been improperly distributing and allocating overtime opportunities for the CCC within VISN 20, affecting bargaining unit employees (“BUEs”) in at least two AFGE locals-Local 2583 and 1108.

Article 21, Section 4 (A) of the MCBA provides that “[o]vertime shall be distributed in a *fair and equitable manner*.” Section (E) states, in part, that “[t]he Department shall make reasonable effort to give employees *as much notice as possible* when planned overtime is required. . . .” Section (K) also states that, “[r]osters of employees *will be utilized* to determine voluntary or involuntary overtime”; specifying that, “[t]he mechanics and eligibility of the rosters are subjects for local negotiations and *seniority will be the criterion*.” (Emphasis added). Further, Section (D) states, “[i]t is agreed that *non-bargaining unit employees shall not be scheduled on overtime to perform the duties of bargaining unit employees* for the sole purpose of eliminating the need to schedule bargaining unit employees for overtime.” (Emphasis added).

The Department has been randomly and unfairly distributing and selecting overtime opportunity in manner inconsistent with Article 21. Specifically, the Department has been sending and posting overtime opportunities without sufficient time for BUEs to bid for those slots, particularly, if certain BUEs are on Compressed Work Schedules (“CWS”). Further, certain BUEs are being omitted from the distribution lists and missing the opportunity to volunteer all together, resulting in affected BUEs not being notified or timely notified. On several occasions, BUEs with greater seniority are not selected for the overtime in which they qualify. The Department is not utilizing rosters to determine allocations of overtime pursuant to its contractual duties under the MCBA. In addition, the Department has been selecting supervisors to take overtime opportunities that should otherwise be filled by BUEs based upon work needs and seniority. As a result of the Department’s perfunctory and haphazard method in which it distributes and allocates overtime, qualified BUEs are losing their overtime opportunities and monetary gain, in violation of Article 21 of the MCBA.

Notably, Section K of Article 21, allows the mechanics, and eligibility of the overtime rosters to be subject to local negotiations. However, the Department has ignored the Union’s request for its notice and processes to be consistent with its MCBA. In circumstances where management has demonstrated its refusal to bargain and continues to violate contractual obligations, a Union need not be required to make a formal demand to bargain when those efforts may be futile. *Cf., Fed. Bureau of Prisons, Fed. Corr. Inst., Bastrop, Tex.*, 55 FLRA 848, 855 (1999) (internal citations omitted) (the union did not have to make a demand to bargain in circumstances where a request would be useless for example, if management has already indicated that it refuses to bargain). Here, by circumventing the Union in its process as to what manner of allocations are appropriate, the Department has failed to bargain in good faith in violation of 5 U.S.C. § 7116(a)(5).

In like manner, the MCBA mandates in Article 49, Section 2(A), in part, that “[i]n all matters relating to personnel policies, practices, and other conditions of employment, the parties will have due regard for the obligations imposed by 5 U.S.C. Chapter 71. . . .” Section (C) states that the Department will follow statutory and contractual prohibitions against restraints, coercion, discrimination, or interference with any Union representative or employees in the exercise of their rights. Therefore, the Department’s blatant disregard for the processes under Article 21 is not only also in violation of Article 49 but is a direct violation of the Statute therein as detailed above.

Violations

By allocating overtime opportunities within the CCC inconsistent with Article 21, and 49 the Department has also committed unfair labor practices under 5 U.S.C. § 7116(a)(5) as stated above. The Department has also committed multiple unfair labor practices by its continued failure of remedy the situation despite the Unions continuous efforts.

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.

Lastly, by distributing and allocating overtime in a manner inconsistent with Article 21, the Department has violated any and all other relevant articles, laws, rules, regulations, customs and past practices not herein specified.

Remedy Requested

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

- To cease and desist the improper distribution and allocation of overtime;
- To fully comply with its contractual obligations under Articles 2, 21, and 49 of the MCBA, and its statutory obligations under the Statute;
- To distribute an electronic notice posting signed by the Director of the VISN 20 via email, concerning the Department's improper distribution and allocation of overtime;
- To make whole any and all VA employee affected by the overtime violation(s), including back pay, interest, and attorney's fees;
- To comply with its obligations under federal law, regulations, and contract; 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. 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.

Lynn Alexis

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