



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-07/18/23

Date: July 18, 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
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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 its Failure to Satisfy Bargaining Obligations Regarding Unilateral Changes in Conditions of Employment in the VISN 17 Clinical Contact Center

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 violations regarding the Department’s failure to provide notice and an opportunity to bargain over changes in conditions of employment in the VISN 17 Clinical Contact Center (“CCC”) and the reorganization thereof within VISN 17. To date, the Department has failed to remedy this violation, and as such, continues to violate the parties’ MCBA and federal law.

Specifically, the Department violated Articles 1, 2, 3, 45, 47 and 49 of the MCBA; 5 U.S.C. Section 7116 (the “Statute”); memorandum of understanding (“MOU”); and any and all other relevant laws regulations, Master Agreement provisions, 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

Since January 2022, the Department has taken steps to reorganize the workforce to establish CCCs at the VISN level in accordance with VHA Directive 1006.04. The CCC within each VISN is designed to provide virtual same day care and support, 24/7, using various means of technology. On January 26, 2022, a national MOU (hereinafter, “January 2022 MOU”) (Exhibit 1) was executed, addressing a variety of issues related to the reorganization, including for example, training needs and procedures for local union representation. Several VISNs have since undergone this reorganization process, each of which triggers a bargaining obligation with the Union. Certain reorganizations also trigger the need for representational petition(s) filed with the Federal Labor Relations Authority.

Here, the changes arising from the VISN 17 CCC reorganization affect employees within several AFGE Locals. Because the changes affect conditions of employment affecting two or more AFGE Locals, the bargaining obligation exists at the national level pursuant to Article 47, Section 2, and Article 49, Section 4 of the MCBA. To date, NVAC has not received notice and an opportunity to bargain over the VISN 17 CCC reorganization, in violation of the MCBA.

Second, upon information and belief, the VISN 17 CCC has unilaterally removed several AFGE bargaining unit employees and/or positions out of their respective bargaining units, depriving them of their right to union representation and the rights afforded under the Statute, in violation of 5 U.S.C. § 7116(a)(5) and (a)(1), Article 47 and Article 49 of the MCBA, and the January 2022 MOU-paragraphs 4 and 5 providing, in part, that AFGE bargaining unit employees will continue to be represented by their existing AFGE Local.

Further, under Article 1, Section 4 of the MCBA, the Union shall be “predecisionally involved in bargaining unit determinations for position changes and the establishment of new positions.” It further provides that where the parties cannot agree over whether a position is in the bargaining unit, but it had previously been in the bargaining unit, “*the employee and/ or position will remain in the bargaining unit* until a decision is issued on the [Clarification of Unit (“CU”) petition] [decided by the FLRA]”. *Id.* (Emphasis Added). The Department is also required to collect dues from the employees and allocate those dues to the Union until a decision is issued on the CU petition pursuant to Article 45, Section 8. The NVAC never received any notice of VISN 17 changing the BUS codes for employees and station reassignments pursuant to the reorganization of the CCC within VISN 17. The failure to withhold dues withholding for these employees violates Article 45.

VISN 17 was obligated to provide the Union with advance notice and a reasonable opportunity to request bargaining when it was going to exercise a management right with respect to reorganization of VISN 17 that involved changes in working conditions of bargaining unit employees, and bargain over the procedures and implementation of such changes for the affected employees. *Dep’t of Homeland Sec., Customs & Border Prot.*, 64 FLRA 989, 994 (2010). By circumventing the Union in changes with respect to the reorganization of VISN 17, impacting the benefits and privileges with respect to Union members, the Department has failed to bargain in good faith in violation of 5 U.S.C. § 7116(a)(5) and has interfered with and restrained employees of rights pursuant to the Statute, in violation of (a)(1) of the Statute.

The Department's actions constitute multiple other violations of the MCBA and federal law. 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, as set forth above, the Department also failed to comply with Article 2. Additionally, 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 failing to notify, consult, and negotiate with the Union prior to implementing reorganization of VISN 17, and changes affecting various conditions of employment for the employees within VISN 17, the Department renounced its commitments under Article 3 of the MCBA.

Violations

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

- Article 1 of the MCBA: prohibiting the Department from unilaterally removing positions/employees from the bargaining unit without involving the Union;
- Article 2 of the MCBA: requiring the Department to comply with federal law and regulations;
- Article 3 of the MCBA: requiring the parties to promote effective labor-management relationships by using cooperative methods in an effort to fulfill their collective bargaining obligations;
- Article 45 of the MCBA: requiring the Department continue to collect and allocate dues from bargaining unit position even when there is an ongoing dispute as to whether the position is in the bargaining unit;
- Articles 47 and 49 of the MCBA: which set forth the parties' responsibilities regarding mid-term bargaining at the national, intermediate and local levels, including, the Department's obligation to provide advance written notice to the President of the NVAC, or her designee, of changes in personnel policies, practices, or working conditions affecting the interests of two or more Locals;
- January 2022 MOU, requiring remaining BUEs to not be removed from Locals, and subsequent employees who become AFGE bargaining unit employees to be represented by a local based on their duty location;
- 5 U.S.C. § 7116: requiring the Department to provide adequate notice of proposed changes in conditions of employment involving AFGE bargaining unit employees, and providing the Union an opportunity to bargain prior to implementing such changes; and
- Any and all other relevant laws, regulations, customs, Master Agreement provisions and past practices not herein specified.

Remedies Requested

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

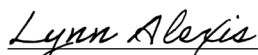
- Cease and desist any change in bargaining unit employee's/position and BUS codes and return to status quo;
- To properly notify NVAC and provide an opportunity to bargain over proposed changes in working conditions, specifically, the realignment of employees and the changes thereof;

- Return to a *status quo ante* remedy until its obligations are met;
- To fully comply with its contractual obligations under Articles 2, 3, 45, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. § 7116;
- To distribute an electronic notice posting to all bargaining unit employees concerning the Department's failure to properly provide notice and an opportunity to bargain to the NVAC regarding changes in bargaining unit employee's representational status and VISN 17 reorganization;
- To make whole any AFGE Local Union that has, or will, fail to receive dues allotments due to the Department's unilateral cancellation of dues withholding from the bargaining unit employees pursuant to removal and not assigning employees to the appropriate AFGE Locals;
- To make whole any aggrieved employee deprived of any rights or benefits afforded to them under the MCBA or Statute pursuant to the Department's actions, to include restoration/reimbursement of any entitlement not limited to, leave and official time;
- Agree to comply with any and all other relevant laws, regulations, customs, Master Agreement provisions, MOUs, and past practices not herein specified; and
- 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.

Submitted by,



Lynn Alexis, Esq.

Staff Counsel, National VA Council

Office of the General Counsel

American Federation of Government Employees, AFL-CIO

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

Exhibit 1

Memorandum of Understanding

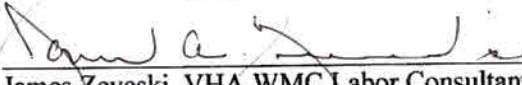
The following constitutes an agreement with the Department of Veterans Affairs, Veterans Health Administration and the American Federation of Government Employees, (AFL-CIO) National Veterans Affairs Council #53 concerning VHA Directive 1006.04 Clinical Contact Centers.

1. The purpose of the VHA Clinical Contact Centers Modernization is to provide safe, timely and seamless virtual same-day care and support via phone, video, chat and email within VA Health Connect 24 hours a day, 7 days a week.
2. Bargaining unit employee will be provided the necessary training that will allow them to fulfill the requirements of VHA Directive 1006.04 Clinical Contact Centers. Such training will be available in different forums and times to allow all affected employees to attend.
3. All training must be accomplished during duty time. No approved leave may be canceled solely due to scheduled training. No performance standards will be applied during the time an employee is in training.
4. Bargaining unit employees assigned to a Clinical Contact Centers must not be removed from the local they currently are represented by.
5. All subsequent hires who become AFGE bargaining unit employees will be assigned to the AFGE Local closest to their duty location, if they are virtual, or to the facility where they are to report if they are return to a VA workstation.
6. Staffing of Clinical Contact Centers shall be consistent with National Collective Bargaining Agreements and any local agreements in effect at the signing of this MOU.
7. Bargaining unit employees, shall not lose leave previously approved leave solely because of the implementation of VHA Directive 1006.04 and the Clinical Contact Center Modernization Guidebook.
8. NVAC reserve its right to address matters related to VHA Directive 1006.04 Clinical Contact Centers as they occur.
9. Upon their receipt, the appropriate management officials shall provide a copy of this MOU to the AFGE Local Union President.


Cathyrine A. Michael, Labor Relations Specialist
For the Department of Veterans Affairs (VA)

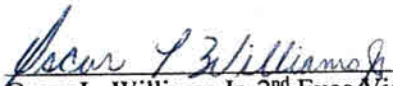
01/26/2022

Date


James Zeveski, VHA WMC Labor Consultant
For Veterans Health Administration (VHA)

1/26/2022

Date


Oscar L. Williams Jr. 2nd Exec Vice President
AFGE National Veterans Affairs Council #53

01/26/2022

Date