



NATIONAL VETERANS AFFAIRS COUNCIL

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

Out of Many/**One Union**
AFGE NVAC/AFL-CIO

NATIONAL GRIEVANCE NG-3/5/2024

Date: March 5, 2024

To: Denise 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: Shalonda Miller, 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 bypassing the NVAC and dealing directly with AFGE BUEs concerning the merger of the Jesse Brown and Hines VA medical facilities

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 (2023) (“MCBA” or “Master Agreement”), the 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”) for bypassing the NVAC and dealing directly with AFGE bargaining unit employees (“BUEs”) concerning the merger of the Jesse Brown and Hines VA medical facilities. To date, the Department has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the Department violated Articles 1, 2, 3, 47, and 49 of the MCBA; 5 U.S.C. § 7116 (a) and any and all other relevant articles, laws, regulations, customs, 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 a continuing basis and most recently on February 13, 2024, VISN 12 Director, Daniel Zomchek has been holding “pre-decisional” meetings with AFGE bargaining unit employees (“BUEs”) concerning a possible merger of the Jesse Brown and Hines VA Medical facilities in Chicago, Illinois. Mr. Zomchek has described these meetings as “collaborative discussions” concerning a possible merger and how it may improve veteran services in the area. However, these meetings include substantive discussions of proposed forthcoming changes in conditions of employment, such as, relocating offices, increasing patient care services at Jesse Brown, and standardizing compensation and award packages. The Department violates the MCBA and Statute when it bypasses the exclusive representative by dealing directly with BUEs over conditions of employment.

Article 47, Section 4 of the MCBA specifically provides that proposed changes in policies, procedures or working conditions affecting the interests of bargaining unit employees at **two or more locals** be provided to the NVAC President, or her designee. To date, VISN 12 has not provided any information to NVAC. It appears that Mr. Zomchek is relying on his contention that the conversations he continues to have with BUEs are “pre-decisional,” which, in his view, somehow absolves him of his contractual and statutory obligations. Further, a bypass of the Union occurs when an agency undermines the exclusive representative by not communicating with the Union at the appropriate level of recognition. A bypass constitutes an unfair labor practice under the Federal Service Labor-Management Relations Statute. A merger of these facilities has the potential to impact more than 2,000 BUEs. Accordingly, any discussions with BUEs concerning this merger and forthcoming changes to conditions of employment, pre-decisional or otherwise, must be initiated with NVAC as the exclusive representative. Separate and apart from any contractual or statutory claim related to the bypass of NVAC, the Department has further violated Article 49 by communicating directly with AFGE BUEs through verbal surveys and questionnaires without prior notice and bargaining with NVAC.

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 dealing directly with BUEs concerning conditions of employment;
- Article 2 of the MCBA: requiring the Department to comply with federal law and regulations;
- Article 3 of the MCBA: requiring the Department to maintain an effective, cooperative labor-management relationship with the Union;
- Articles 47 and 49 of the MCBA: requiring the Department to provide adequate notice to NVAC concerning proposed changes in conditions of employment affecting unit employees; Article 49 of the MCBA: prohibiting the Department from communicating directly with BUEs through verbal or written surveys and questionnaires without prior notification and bargaining with NVAC;
- 5 U.S.C. § 7114: permitting a labor organization that has been accorded exclusive representation of a bargaining unit to act for and negotiate on behalf of all employees in the unit;

- 5 U.S.C. § 7116(a)(1) and (5): prohibiting the Department from dealing directly with BUEs concerning any matter affecting the employees' conditions of employment; and
- Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

Remedies Requested

The Union requests that, to remedy the above situation, the Department agrees to the following:

- To cease and desist the bypassing of NVAC;
- To fully comply with its contractual obligations under Articles 1, 2, 3, 47 and 49 of the MCBA; and its statutory obligations under 5 U.S.C. §§ 7114 and 7116;
- To agree to meet all bargaining obligations at the appropriate level of recognition, and avoid bypassing the Union by communicating changes in working conditions directly with employees;
- To distribute an electronic notice posting, signed by the VISN Director to all BUEs providing that the Department recognizes and intends to fulfill its obligations under the Federal Service Labor-Management Relations Statute; 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. The undersigned is the designated representative for this grievance. If you have any questions regarding this National Grievance, please contact the undersigned at AFGE Office of the General Counsel.

Filed by,



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