



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-05/30/24

Date: May 30, 2024

To: Denise Biaggi-Ayer
Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
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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 Failing to Comply with Article 33 Concerning Probationary Employees

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 (2023) (“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 (“Agency” or “VA”) for violations of Article 33 of the MCBA (Temporary, Part-Time, and Probationary Employees). To date, the Agency has failed to remedy these violations, and as such, continues to violate the parties’ MCBA and federal law.

Specifically, the Agency violated Articles 2, 3, and 33 of the MCBA; 5 U.S.C. §7114(a) and §7116(a) (the “Statute”); 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

Article 33, Section 1(C), provides that an employee is entitled to union representation if the employee reasonably believes that an investigatory examination may result in disciplinary action (such as separation) and union representation is requested. Similarly, Section 1(D) requires the Union's right to be represented at formal discussions between a management official and a probationary employee. On an ongoing and continuing basis, the Agency has failed to comply with these provisions with respect to probationary employees, depriving union representation during a disciplinary action. Additionally, Article 33, Section 2(B), and Section 3(B), require, in part, that prior to the removal of a probationary employee, that employee will have an opportunity to develop and demonstrate their proficiency. In sum, this requires, VA to conduct previous performance assessments, trainings and counseling, in attempt to cure any deficiencies.

On a perpetual basis, VA has institutionally failed to comply with these provisions of the MCBA, adversely affecting AFGE bargaining unit employees across the country. Representative examples of such violations have been reported by AFGE Locals: 1972 Alexandria, LA; 3553 New Orleans, LA; 2525 Shreveport, LA, and 3922 El Paso, TX, stating that VA has cited inadequacies of performance or conduct as cause for termination without first counseling the employee and exploring courses of action that may be taken by the employee and the Agency to provide appropriate assistance for those deficiencies. Further, upon information and belief, employees are not provided access to their local representative when requested during meetings that could lead to discipline; for example, when they are receiving notice of termination, in violation of Article 33, Section 1. The Union is likewise omitted from such formal discussions and bypassed. *Id.*

By failing to comply with the MCBA, the VA has violated Article 33 of the MCBA and 5 U.S.C. §7116(a)(1). Further, by excluding the Union and depriving probationary employees of their right to union representation, the Agency has violated 5 U.S.C. §7114(a)(1) and (2), constituting an independent violation of 5 U.S.C. §7116(a)(1). These repeated violations of Article 33 rise to the level of repudiation of the MCBA in violation of 5 U.S.C. § 7116(a)(8) of the Statute.

The Agency's actions constitute multiple other violations of the MCBA. Article 2 of the MCBA requires that the Agency comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Therefore, in violating 5 U.S.C. §§ 7114(a) and 7116(a), as set forth above, the Agency 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 repeatedly refusing to comply with Article 33 with respect to the rights afforded to probationary employees, the Agency has also renounced its commitments under Article 3 of the MCBA.

Violations

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

- Article 2 of the MCBA: requiring the Agency to comply with federal law;

- 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;
- Articles 33 of the MCBA: which set forth the Agency's responsibilities regarding rights of probationary employees;
- 5 U.S.C. §7114(a) and §7116(a)(1) and (8); and
- Any and all other relevant laws, regulations, customs, MCBA provisions and past practices not herein specified.

Remedies Requested

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

- To fully comply with its contractual obligations under Articles 2, 3, and 33 of the MCBA and its statutory obligations under 5 U.S.C. §7114(a) and §7116(a);
- To distribute an electronic notice posting signed by the Secretary to all AFGE bargaining unit employees concerning the Agency's refusal to comply with Article 33 of the MCBA;
- 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

Lynn Alexis, Esq.

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cc: Alma L. Lee, President, AFGE/NVAC
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