

NATIONAL GRIEVANCE  
NG-6/27/2013

**Date:** June 27, 2013

**To:** Larry Bennett  
(Acting) Deputy Assistant Secretary,  
Labor – Management Relations  
Department of Veterans Affairs  
810 Vermont Avenue, NW  
Washington, DC 20420

**From:** Ami Pendergrass, Attorney, National Veterans Affairs Council (#53) (NVAC), American Federation of Government Employees (AFGE), AFL-CIO

**Subject:** National Grievance in the matter of the Department of Veterans Affairs (VA) failure to comply with Article 44, Section 2(D) of the Master Agreement Between The Department of Veterans Affairs and the American Federation of Government Employees (2011) (“MCBA”) concerning transcription costs

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 (Union) is filing this national grievance against you and all other associated Department of Veterans Affairs (“VA”) officials and/or individuals acting as agents on behalf of the VA for violations as it relates to its failure to comply with Article 44, Section 2(D) concerning transcription costs.

Specifically, on or about June 5, 2013 and on a continuous and on-going basis, the VA, by and through its representatives and/or agents, has:

- (1) Refused and continues to refuse to abide by the plain language of Article 44, Section 2(D) concerning the handling and payment of transcript costs, affecting at least two Locals (AFGE Local 331 and AFGE Local 2798).

In doing so, the VA has violated the following provisions:

- (1) Article 44, Section 2(D); and
- (2) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

## STATEMENT OF THE CASE:

### **I. Background**

Article 44 of the MCBA addresses the provisions required for the parties to engage in arbitration. Included in those provisions is the language found in Article 44, Section 2(D), which reads in entirety:

The arbitrator's fees and expenses shall be borne equally by the parties. If either party requests a transcript, that party will bear the entire cost of such transcript.

In at least two separate hearings (FMCS No: 120208-01433-1, AFGE Local 2798; FMCS No: 120525-55923-1, AFGE Local 331), the Agency, through its representatives, have engaged the use of a court reporting service for purposes of providing a transcript, but, in light of the plain language in the MCBA as to which party bears the cost, has insisted that the parties in those matters bear the cost equally. In the matter of FMCS No 120525-55923-1, AFGE Local 331, the Local ultimately paid the cost. In the case of FMCS No. 120208-01433-1, AFGE Local 2798, the Union's representative, Jennifer Shingle, has continued to dispute the charges with VA Regional Counsel Julie Zimmer and has continued to dispute the matter with the outside reporting service, with whom the Union has no formal contract, over the Agency's debt owed. The last such discussion occurred on June 5, 2013.

It is the Union's position as well as long standing practice that while those costs associated with the **arbitrator** (such as hearing, decision writing, travel and lodging expenses associated with his or her services) are jointly shared as indicated in Article 44, Section 2(D), if a party, **in addition to those expenses associated with the hiring and services of the arbitrator**, wishes to engage the outside third party services of a court reporting service to provide a transcript, then the party that **engages the service** pays the "entire" cost. Court reporting services are not part of arbitrator expenses and, as the plain language of Article 44, Section 2(D) suggests, are to be borne by the party who orders the service. Additionally, entire costs means all costs that could be assessed as a result of the service. The language does not support the assertion that only the cost of the creation of the transcript is covered, while all over associated costs are somehow outside of the scope of the term "entire."

### **II. Violation**

The Agency's refusal to bear the full cost of the court reporter services for transcripts is in direct violation of the language of Article 44, Section 2(D).

### **III. Remedy Requested**

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

- (1) To agree to cease and desist immediately the practice of requiring parties to jointly split the cost of court reporting services for purposes of a transcript;
- (2) To immediately send out guidance to the field to educate the field on what costs the parties are obligated to pay in an arbitration hearing;
- (3) To immediately reimburse Local 331 for its portion of payment to the court reporting services in its case, FMCS No. 120525-55923-1;
- (4) To immediately pay the full cost of the court reporting service fees in FMCS No. 120208-01433-1 and to provide a written explanation, with copy to the Union, to the court reporting service as to the reason for the delay in payment; and
- (5) To agree to any and all other remedies appropriate in this matter.

#### **IV. 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 regarding this National Grievance, please feel free to contact me at (202) 306-3664.

Ami Pendergrass  
Attorney  
AFGE/NVAC

Cc: Alma L. Lee, President, AFGE/NVAC  
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC