

NATIONAL GRIEVANCE
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DATE: October 17, 2014

TO: Kimberly Mosley
Deputy Assistant Secretary,
Labor – Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

FROM: Gregory J. Meditz, Staff Attorney, National Veterans Affairs Council, American Federation of Government Employees, AFL-CIO

SUBJECT: **National Grievance in the matter of the Department of Veterans Affairs failure to comply with 5 U.S.C. § 7131(d) and Master Agreement Article 3, Section 7 and Article 48, Sections 1, 2, 4, and 6 concerning the assignment of and negotiation of official time.**

STATEMENT OF CHARGES

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement between the Department of Veterans Affairs (VA) and the American Federation of Government Employees (AFGE) (2011) (Master Agreement), the American Federation of Government Employees/ National Veterans Affairs Council (Union) is filing this national grievance against the VA and all other associated VA officials and/or individuals acting as agents on behalf of the VA for violations as it relates to its failure to comply with 5 U.S.C. §7131(d) and Article 3, Section 7 and Article 48, Sections 1(B), 2(A)(5), 4, and 6(A) of the Master Agreement concerning assignment and use of official time. This grievance is timely because it has been submitted within 30 days of the act or occurrence in question.

Specifically, on or about September 18, 2014, the VA, by and through its representatives and/or agents, has denied the Union its right to use official time under 5 U.S.C. §7131(d) by failing to allocate 100% official time without counting such time against any allocated official time to a union official traveling to a joint labor-management committee (forum) consistent with Article 3, Section 7 and Article 48, Sections 4 and 6(A).

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

- (1) 5 U.S.C. §7131(d)
- (2) Master Agreement Article 48, Sections 4 and 6(A); and

- (3) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

STATEMENT OF THE CASE

I. Background

5 U.S.C. §7131 provides statutory authority for exclusive representatives to utilize official time for purposes of representation. Sections (a) through (c) of the act mandate statutory official time as a right under law for matters such as negotiation or attendance at an FLRA proceeding. Section (d) of the statute allows the parties to reach additional agreements for the use of official time. It reads:

(d) Except as provided in the preceding subsections of this section

—

- (1) any employee representing an exclusive representative or
 - (2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,
- Shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

The parties recognized the authority to negotiate official time under 5 U.S.C. §7131(d) in Section 1(B) of Article 48 of the Master Agreement, which reads:

As provided in 5 U.S.C. §7131, official time shall be granted as specified in law and in any additional amount the Department and the Union agree to be reasonable, necessary, and in the public interest. Official time shall be granted for activities as specified in the law and in amounts specified by this Agreement or otherwise negotiated.

Article 3, Section 7 and Article 48, Sections 2(A)(5), 4, and 6 represent official time negotiated by the parties as part of the Agreement. Article 3, Section 7 establishes Union representatives' right to be on official time for joint labor-management forums. Article 48, Section 2(A)(5) establishes certain union officials to be on official time as a percentage of their time worked for the VA. Section 4 establishes that time spent in connection with labor-management relations committee meetings shall not be charged against other official time allotted. Finally, Section 6(A) establishes that official time for all activities related to forums will not be counted against any allocated official time described in the Master Agreement.

II. Violation

On August 13, 2014, Donna J. Reesman, Chief, Employee/Labor Relations, National Cemetery Administration (NCA), invited members of the NCA Intermediate Labor-Management Forum to attend a face-to-face forum meeting in Denver, CO on October 27 to 30, 2014 with travel dates on October 27 and October 30. William Jefferson, National Representative, Union was among the invited parties. On September 18, 2014, Mr. Jefferson submitted a request to Deirdre B. Weiss, Special Counsel, Board of Veterans' Appeals, for official time to attend the forum for the applicable dates. In an emailed response on the same day, Ms. Weiss recommended that Mr. Jefferson use his national official time allotment of 20 hours or existing 50% time that week for his travel days. See E-mail from Deirdre B. Weiss to William Jefferson (Sept. 18, 2014, 10:56 AM) (attached).

Ms. Weiss' failure to approve Mr. Jefferson's request for official time without counting such time against any allocated official time for his travel days to the forum is a violation of the Master Agreement. As stated in the language of Article 48, Section 1(B), the parties contemplated that 5 U.S.C. §7131(d) provided a basis for negotiating official time in amounts that are reasonable, necessary, and in the public interest. Article 3, Section 7 further states that official time for attending forums will not be counted against any allocated official time as described in the Master Agreement. Article 48, Section 4 reiterates that principle, stating that "[t]ime spent in connection with national bargaining and LMR Committee meetings shall not be charged against other official time allotted." The broad language used in Section 4 includes all time connected with LMR Committee meetings, notably travel. Article 48, Section 6(A) further establishes that official time for "all activities" related to forums will "not be counted against any allocated official time." This means that Mr. Jefferson's allocated official time under Section 2 of the Master Agreement should not be reduced for his travel time to a forum.

As a face-to-face forum between NCA management and union members, the Denver forum meeting is exactly the forum a union official should and must receive official time for travel consistent with the Master Agreement. This official time should not be counted against any accumulated, allocated, or other official time provided to Mr. Jefferson under the Master Agreement.

III. Remedy Requested

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

- (1) To fully comply with 5 U.S.C. §7131(d) and Articles 3 and 48;
- (2) To make whole any individual who was not properly granted official time as a result of this violation through restoration of annual leave;
- (3) To make whole any Local whose allocated time was improperly recorded and counted against a local's official time allocation due to this violation; and
- (4) 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 contact me at 202-639-6424.

A handwritten signature in black ink, appearing to read "Gregory J. Meditz", written over a horizontal line.

Gregory J. Meditz
Staff Attorney
National VA Council

cc: Alma L. Lee, President, AFGE/NVAC
James Alsup, Chair, Grievance and Arbitration Committee, AFGE/NVAC