

NATIONAL GRIEVANCE
NG-11/3/2015

DATE: November 3, 2015

TO: Donald Stephen
Office of Labor-Management Relations (LMR)
Department of Veterans Affairs

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 Settlement Agreement of National Grievance 9/6/15, Utilization of Supervisory Notes.**

STATEMENT OF CHARGES

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement between the Department of Veterans Affairs (Agency) 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 the Settlement Agreement of National Grievance 9/6/15, Utilization of Supervisory Notes (Settlement Agreement). This grievance is timely because it is has been filed within 30 days of the act in question.

Specifically, on or about July 27, 2015, the Agency, by and through its representatives and/or agents, and Union, by and through its representatives and/or agents, settled National Grievance 9/6/12 concerning the use of supervisory notes as agreed to in Article 24, Section 4 of the Master Agreement.¹ As part of those settlements, the parties agreed to promulgate a posting to Agency employees regarding the meaning and use of supervisory notes within 90 days of the settlement. On November 2, 2015, the Agency indicated that it would be unable to meet the deadline due to a failure to agree to language included in the posting.² In doing so, the Agency has violated the following provisions:

- (1) Settlement Agreement of National Grievance 9/6/15, Utilization of Supervisory Notes, Term 3;
- (2) Master Agreement Article 24, Section 2;
- (3) Case law promulgated in AFGE Local 2382 and VA, 64 F.L.R.A. 713 (Apr. 28, 2010); and
- (4) any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

¹ National Grievance – 9/6/15 is attached as Exhibit 1; Settlement Agreement is attached as Exhibit 2.

² Email from Agency to Union (Nov. 2, 2015, 11:31 EST) is attached as Exhibit 3.

STATEMENT OF THE CASE

I. Background

On or about September 6, 2012, the Union filed a national grievance concerning the use of supervisory notes among several managers across the Agency. The Union alleged, *inter alia*, that reports of contact (ROCs) are supervisory notes under the contract and the law. On or about July 27, 2015, the Agency and the Union signed a settlement agreement for the aforementioned national grievance. The settlement included an agreement to issue a joint posting within 90 days to all bargaining unit members and supervisors at all levels that the Agency will comply with the provisions of Article 24, Section 4.

As part of the negotiations of the language to be included in the posting, the Union demanded that the Agency uphold the interpretation of the Federal Labor Relations Authority of “supervisory notes.” AFGE Local 2382 and VA, 64 F.L.R.A. 713 (April 28, 2010). The Authority interpreted reports of contacts written by employees that are provided exclusively to and kept by supervisors to be supervisory notes under the Master Agreement. The Agency has disagreed with the Union’s demand and interpretation of this contract provision.

On October 26, 2015, the Agency requested an extension to meet the deadline. The same day, the Union granted a five calendar day extension; the extended deadline was November 2, 2015.³ As of today, the Agency and Union have failed to settle on language to be used in the posting.

II. Violation

By failing to include language that follows the interpretation of the FLRA, the Agency has violated the Settlement Agreement regarding completing a posting concerning supervisory notes and adhering to case law explicitly addressing the interpretation of the term “supervisory notes.”

III. Remedy Requested

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

- (1) To agree to a posting inclusive of the Authority’s interpretation of the term “supervisory notes”;
- (2) To disseminate this posting as soon as possible to all Union bargaining unit employees and Agency supervisors;
- (4) To agree to any and all other remedies appropriate in this matter.

³ Email from Union to Agency (Oct. 26, 2015, 13:55 EST) is attached as Exhibit 4.

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.



Gregory J. Meditz
Staff Attorney
National VA Council

cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chair, Grievance and Arbitration Committee, AFGE/NVAC
James Alsup, Managing Attorney, AFGE/NVAC



NATIONAL GRIEVANCE
NG-09/6/2012

Date: September 6, 2012

To: Leslie Wiggins
Deputy Assistant Secretary,
Labor – Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

From: Ibidun Roberts, 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 the MCBA concerning the provision, maintenance, and utilization of supervisory notes.

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 the MCBA concerning the provision, maintenance, and utilization of supervisory notes.

Specifically, on an ongoing and continuing basis, the VA, by and through its representatives and/or agents, has:

- (1) Maintained supervisory notes without showing them to the bargaining unit employee;
- (2) Failed to provide a copy of supervisory notes prior to using them in a detrimental action;
- (3) Maintained supervisory notes beyond the Article 24 Section 4(D) six-month period; and
- (4) Refused to provide documents maintained under a bargaining unit employee’s identifier to that employee or designated representative upon request.

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

- (1) Article 24 of the MCBA;
- (2) Section 6 of Article 17 of the MCBA; and

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

STATEMENT OF THE CASE:

I. Background

A bargaining unit employee at the Beckley VAMC was the subject of an AIB investigation. After the conclusion of the investigation, the employee received a proposal for removal dated July 12, 2012. The employee requested the evidence file and received it on July 12, 2012. The evidence file contained approximately fifteen (15) reports of contact (ROC) and other written complaints with dates ranging from May 21, 2010 to August 26, 2011. None of these documents/notes were ever previously discussed with the employee. Copies of the documents/notes were never given to the employee prior to its inclusion in the current evidence file.

Similar incidents have occurred with respect to detrimental actions against bargaining unit employees in several locations, including, but not limited to Roseburg, OR; Louisville, KY; Sheridan, WY; and Prescott, AZ. Each station has employees who received evidence files containing ROCs or other documents/notes not previously provided at the earliest time after the entry was made. Although maintained, the Agency refused to provide these documents/notes when specifically requested by the employee or designated representative.

II. Violation

The VA unlawfully includes and considers supervisory notes, such as ROCs, in a detrimental action against an employee that was never previously provided to the employee.

The VA unlawfully maintains supervisory notes beyond the contractual six-month period.

The VA unlawfully refuses to provide supervisory notes maintained under an employee's personal identifier even upon request.

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 the practice of maintaining supervisory documents/notes that are undisclosed to the relevant bargaining unit employee;
- (2) To agree to cease and desist the practice of using and considering supervisory documents/notes in a detrimental action that are undisclosed to the relevant bargaining unit employee or beyond the period in Article 24 Section 4(D);

- (3) To agree to issue a joint statement to all bargaining unit members and their supervisors at all levels that the VA will comply with the MCBA, within 90 days of any settlement of this grievance or 30 days of an arbitration decision;
- (4) To agree to rescind and/or mitigate any and all detrimental actions that rely upon the improper supervisory documents/notes;
- (5) To agree to make whole any employee affected by (4); and
- (6) 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) 480-0064.

Ibidun Roberts
Attorney
AFGE/NVAC

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

SETTLEMENT AGREEMENT
National Grievance – 9/6/12
Utilization of Supervisory Notes

The National Veterans Affairs Council – American Federation of Government Employees (“AFGE” or the “Union”) and the Department of Veterans Affairs (“Agency”) hereby agrees to settle all disputes arising out of the AFGE’s National Grievance 9/6/12, Utilization of Supervisory Notes, in accordance with the following terms and conditions:

I. Withdrawal of Grievance:

By execution of this settlement agreement (hereafter “Agreement” or “Settlement Agreement”), AFGE voluntarily withdraws the National Grievance and waives any and all national actions, claims, complaints, grievances, appeals, or proceedings arising from the allegations contained in the National Grievance, with the exception of any grievances that may arise by reason of breach of any term of this Settlement Agreement. AFGE agrees to promptly provide any document or take other action necessary to effectuate the withdrawal or dismissal of the National Grievance.

II. Terms of the Settlement:

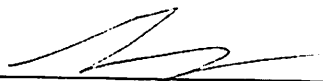
By execution of this Agreement, AFGE and the Agency (collectively the “parties”) have agreed to the following:

1. The Agency agrees that supervisory notes may only be used to support any action detrimental to an employee if such note(s) have been shown to the employee at the earliest available time after the entry was made and a copy provided to the employee;
2. The Agency will not retain supervisory notes in its possession after six months unless the notes are used in a personnel action, according to Article 24 Section 4(D);
3. Within 90 days of this agreement, the parties will issue a joint statement to all bargaining unit members and supervisors at all levels that the Agency will comply with the provisions of Article 24, Section 4;
4. The parties will take steps to include compliance with Article 24, Section 4 in future trainings on the Master Agreement, which includes a joint revision of the current language in the participant’s training guide. Neither party will offer changes to the Joint Master Agreement training unilaterally.

III. Stipulations:

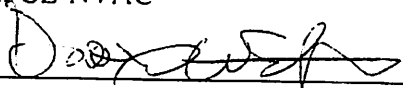
1. The parties have entered into this Settlement Agreement freely and voluntarily.
2. This Settlement Agreement does not constitute an admission of guilt, fault, or wrongdoing by either party.

3. The obligations of the parties specified above constitute consideration sufficient to render this Settlement Agreement enforceable by either party.
4. This Settlement Agreement shall not serve as precedent for resolving any other complaints, grievances, appeals, or actions that may be filed.
5. This Settlement Agreement constitutes the entire understanding between the parties regarding the resolution and settlement of the National Grievance, and there are no other terms or commitments, verbal or written, regarding the settlement of the National Grievance.
6. Either party may bring a claim in the form of a grievance arising by reason of breach of any term of this Settlement Agreement.
7. This Settlement Agreement may not be modified, except by a written agreement signed by the undersigned herein:



Gregory J. Meditz, Staff Attorney
AFGE-NVAC

DATE: 7/21/15



Don Stephen, LR Specialist
Labor-Management Relations (LMR)

DATE: 7/27/15



Gregory Meditz <meditz



Supervisory Notes Posting - LMR Draft

Stephen, Donald <Donald.Stephen@va.gov>
To: Gregory Meditz <meditz.nvac@gmail.com>

Mon, Nov 2, 2015 at 11:31 AM

Hey Greg I'm getting push back from all sides my office and GC. The position from management is this language goes far beyond what we agreed in the settlement. I'm out today and have not talked to anyone directly. I won't be in until tomorrow. Let's talk in the morning in sorry I'm at the VA getting some tests in the basement. Radiology and my phone.doesnt work down here.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.
From: Gregory Meditz
Sent: Monday, November 2, 2015 10:35 AM
To: Stephen, Donald
Subject: [EXTERNAL] Re: Supervisory Notes Posting - LMR Draft

Hi Don,

Today's the day. Are we ready to wrap this up and post it? Let me know.

-Greg

Gregory J. Meditz | Staff Attorney
National Veterans Affairs Council | American Federation of Government Employees, AFL-CIO
80 F Street NW | Washington, DC 20001 | 202-639-6424 (w) | 202-379-2928 (f)

This message may contain confidential attorney-client privileged information and/or confidential attorney work-product. Only an intended recipient of this message is authorized to view, retain, or otherwise use its content, including any attachments and/or metadata. If you are not an intended recipient, please so notify the sender immediately by clicking "reply," and delete this message without reading, printing or otherwise preserving or disseminating its contents.

On Thu, Oct 29, 2015 at 10:00 AM, Gregory Meditz <meditz.nvac@gmail.com<mailto:meditz.nvac@gmail.com>> wrote:
Ok thanks

On Thursday, October 29, 2015, Stephen, Donald <Donald.Stephen@va.gov<mailto:Donald.Stephen@va.gov>> wrote:
Yes he did. He promised me he would go over it tomorrow. I haven't heard from him today. He is in training. I am keeping on ihm. I promise.

From: Gregory Meditz [mailto:meditz.nvac@gmail.com]
Sent: Thursday, October 29, 2015 9:51 AM
To: Stephen, Donald
Subject: [EXTERNAL] Re: Supervisory Notes Posting - LMR Draft

Did Huth get back to you?

On Tuesday, October 27, 2015, Gregory Meditz <meditz.nvac@gmail.com> wrote:
Ok good. Thanks for staying on it.

On Tuesday, October 27, 2015, Stephen, Donald <Donald.Stephen@va.gov> wrote:



Gregory Meditz <meditz@va.gov>



Supervisory Notes Posting - LMR Draft

Gregory Meditz <meditz.nvac@gmail.com>
To: "Stephen, Donald" <Donald.Stephen@va.gov>

Mon, Oct 26, 2015 at 1:55 PM

The Union agrees to a 5 calendar day extension. The revised deadline for completion of the posting is November 2, 2015.

Of course, per our conversation, the Union is hopeful that this posting can be completed and submitted to the Agency and employees in the immediate coming days.

Gregory J. Meditz | Staff Attorney

National Veterans Affairs Council | American Federation of Government Employees, AFL-CIO
80 F Street NW | Washington, DC 20001 | 202-639-6424 (w) | 202-379-2928 (f)

This message may contain confidential attorney-client privileged information and/or confidential attorney work-product. Only an intended recipient of this message is authorized to view, retain, or otherwise use its content, including any attachments and/or metadata. If you are not an intended recipient, please so notify the sender immediately by clicking "reply," and delete this message without reading, printing or otherwise preserving or disseminating its contents.

On Mon, Oct 26, 2015 at 11:22 AM, Stephen, Donald <Donald.Stephen@va.gov> wrote:

Greg,

Can I get an extension for a couple days.

From: Gregory Meditz [mailto:meditz.nvac@gmail.com]
Sent: Thursday, September 24, 2015 4:09 PM
To: Stephen, Donald
Cc: MacEachern, Peter
Subject: Re: [EXTERNAL] Re: Supervisory Notes Posting - LMR Draft

I think we've got a really workable draft. I made some changes though. I took the new definition we put together and put it into the first sentence of the "What is a Supervisory Note?" section; it seemed to make more sense there. I then made an example that applies that definition. I hope the example I made is not contentious but if it is, let me know if you have an alternative.

Gregory J. Meditz | Staff Attorney

National Veterans Affairs Council | American Federation of Government Employees, AFL-CIO
80 F Street NW | Washington, DC 20001 | 202-639-6424 (w) | 202-379-2928 (f)