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7S/00361834

NATIONAL GRIEVANCE
NG-08/25/16

Date: August 25, 2016

To: Larry Bennett
Director, Labor-Management Relations
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420
larry.bennett3@va.gov
Sent via electronic mail

From: Shalonda Miller, Staff Counsel, National Veterans Affairs Council (#53)
(NVAC), American Federation of Government Employees, AFL-CIO (“AFGE”)

RE: **National Grievance in the matter of the Department of Veterans Affairs for its failure to provide notice and an opportunity to bargain over changes to its overtime and leave policies, and for its failure to recognize the Union as exclusive representative by directly dealing with bargaining unit employees regarding changes in conditions of employment.**

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” or “Master Agreement”), American Federation of Government Employees/National Veterans Affairs Council (“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”) for its failure to provide notice and opportunity to bargain over changes to its overtime and leave policies, and for its failure to recognize the Union as exclusive representative by directly dealing with bargaining unit employees regarding changes in conditions of employment.

On or about July 26, 2016, the Union was made aware that bargaining unit employees at regional Consolidated Patient Account Centers (“CPAC”) were notified that the rules for overtime eligibility and the granting of leave were changed. Specifically, Agency



representatives in the Mid-Atlantic CPAC (“MACPAC”), Mid-South CPAC (“MSCPAC”), North Central CPAC (“NCCPAC”) and North East CPAC (“NECPAC”) unilaterally implemented policy changes providing: 1) that overtime could only be performed in one-hour increments; 2) that no employee would be permitted to work overtime if he/she otherwise took leave during the same week, with the exception of pre-approved sick leave; and 3) that Leave Without Pay (“LWOP”) would be denied if the requestor did not maintain a leave balance sufficient to cover the request.

The Agency bypassed the Union by directly communicating these changes to bargaining unit employees via online meetings without giving the Union prior notice and opportunity to bargain. In addition, the MCBA also requires the Agency to provide advance notice to the President of the National VA Council, or her designee, regarding proposed changes in working conditions affecting the interests of two or more local unions. At this time, the Union is aware of the following locals affected by the Agency’s violation of the MCBA: Local 2198 (Beckley, West Virginia), Local 1738 (Durham, North Carolina), Local 446 (Asheville, North Carolina), Local 1966 (Lebanon, Pennsylvania), and Local 1732 (Madison, Wisconsin).¹

By unilaterally implementing these changes, the Agency has violated the following laws, and contract provisions:

1. Article 1, Sections 1, 2 and 3 of the MCBA
2. Article 2, Section 2 of the MCBA
3. Article 3, Section 2 of the MCBA
4. Article 21, Section 4 of the MCBA
5. Article 35, Sections 1 and 10 of the MCBA
6. Article 47, Section 4 of the MCBA
7. Article 49, Sections 2 and 4 of the MCBA;
8. Sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (“Statute”); and
9. any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

¹ The Union reserves the right to supplement the list of affected Locals until such time that this National Grievance is resolved or settled.

STATEMENT OF THE CASE

I. Background

On July 26, 2016, the Union was made aware of a July 13 meeting, led by MACPAC Regional Revenue Manager, Cindy Williams. Participants included Financial Revenue Technicians employed at CPACs throughout the Agency. During the meeting, bargaining unit employees were informed of several changes to their working conditions. These changes included: 1) prohibiting overtime if an employee took scheduled or unscheduled leave during the same week overtime hours were sought, unless pre-approved sick leave; 2) requiring overtime be worked in one hour increments; and 3) requiring employees to maintain a leave balance in other leave categories sufficient to cover any LWOP periods or be deemed AWOL. These policy changes directly impact, at minimum, the four regional CPACs previously identified. The Union was neither informed of nor invited to this meeting, or given the opportunity to bargain over these changes. The Agency's acts are a direct repudiation of the Master Agreement which provides, in part:

- "...overtime will be paid in increments of 15 minutes." (*See* Art. 21, Sect. 4B)
- "No arbitrary or capricious restraints will be established to restrict when leave may be requested." (*See* Art. 35, Sect. 1E)
- "Employees will not be adversely affected in any employment decision solely because of their leave balances." (*See* Art. 35, Sect. 1J)

Furthermore, the Agency's direct communication with bargaining unit employees concerning conditions of employment constituted a bypass. Bypassing the Union and directly dealing with bargaining unit employees violates the Master Agreement as well as § 7116(a)(1) of the Statute because it interferes with the Union's rights to act for and represent all employees in the bargaining unit. A bypass also violates § 7116(a)(5) of the Statute which prohibits an agency from refusing to consult or negotiate in good faith with a labor organization.

II. Violation

By failing to fulfill its obligations, the Agency has violated the following provisions of the MCBA:

- Article 1, Sections 1, 2 and 3: recognizing the Union as the exclusive representative of bargaining unit employees and prohibiting the Agency from bypassing the Union by directly dealing with bargaining unit employees concerning conditions of employment;
- Article 2, Section 2: requiring the Agency to comply with federal statutes and the Master Agreement;

- Article 3, Section 2: granting the Union predecisional involvement in workplace matters in an effort to minimize and eliminate collective bargaining disputes;
- Article 21, Section 4: establishing general overtime provisions, including, but not limited to, the payment of overtime in 15 minute intervals;
- Article 35, Sections 1 and 10: requiring the Agency to comply with federal statutes, OPM regulations and the Master Agreement with regard to its leave policies, and allowing for the liberal application of LWOP;
- Article 47, Section 4B: requiring the Agency to provide notice to the President of the National VA Council, or her designee, of proposed changes in working conditions affecting the interests of two or more locals;
- Article 49, Sections 2 and 4: requiring the Agency to follow statutory and contractual prohibitions against restraint, coercion, discrimination or interference with employees in the exercise of their rights and requiring advance written notice to the Union prior to changing conditions of employment of bargaining unit employees; and
- any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

III. Remedy Requested

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

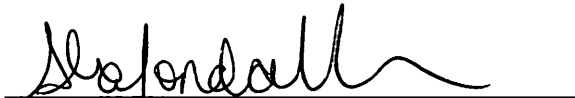
- To return to the *status quo ante*;
- To make whole any bargaining unit employees adversely affected by the Agency's violation of the MCBA;
- To cease and desist bypassing the Union by directly communicating with bargaining unit employees concerning conditions of employment; or otherwise interfering with, coercing, or restraining employees in the exercise of their rights assured by the Statute;
- To provide Union officials advance notice and opportunity to bargain over proposed policy changes affecting conditions of employment of bargaining unit employees;
- To provide CPAC Managers training over the provisions of the Master Agreement;
- To provide advance written notice to the President of the National VA Council, or her designee, prior to changing practices or conditions of employment which affect the interests of two or more local unions;
- To fully comply with its contractual and statutory obligations under the MCBA and federal law; and

- 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 202-639-6424.

Submitted by,



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cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Cathie McQuiston, Deputy General Counsel, AFGE/NVAC