



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-1/6/17

**Date:** January 6, 2017

**To:** Kimberly McLeod  
Acting Executive Director  
Department of Veterans Affairs  
Office of Labor-Management Relations  
810 Vermont Avenue, NW  
Washington, DC 20420  
[kimberly.mcleod@va.gov](mailto:kimberly.mcleod@va.gov)  
*Sent via electronic mail only*

**From:** Thomas Dargon, Jr., 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 failure to notify the Union and follow VA policy regarding the development of qualification standards for the Physical Therapist and Physical Therapy Assistant occupations

## STATEMENT OF CHARGES

Pursuant to the provisions of Article 45, Section 3 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 (“the Union”) is filing this National Grievance against you and all other associated officials and/or individuals acting as agents on behalf of the Agency for failure to notify the Union and follow VA policy regarding the development of qualification standards for the Physical Therapist and Physical Therapy Assistant occupations.

The VA, by and through its representatives and/or agents, initiated the development of revised qualification standards for the Physical Therapist and Physical Therapy Assistant (“PT/PTA”) occupations. The Agency failed to notify the Union of its decision to revise the PT/PTA qualification standards and failed to follow VA policy concerning the development of qualification standards for Veterans Health Administration (“VHA”) hybrid Title 38 occupations. To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA, VA policy, and federal law.

Specifically, the VA violated the Articles 2 and 3 of the MCBA, VA Handbook 5005/16, 5 U.S.C. §7113 and §7116(a), and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.



## STATEMENT OF THE CASE

### **Background**

On or about December 7, 2016, Mark Havran, VHA National Physical Therapy Lead, sent email correspondence to VHA PMRS PT Chiefs, VHA PMRS PT Assistants, and VHA National Physical Therapists announcing that VHA had initiated the “formal concurrence” process for revisions to the PT/PTA qualification standards. The email stated that “VA HR providing comments that will go back to SMEs to clarify.” The Union was not notified that the Agency intended to revise the PT/PTA qualification standards. The Agency did not solicit the Union to provide non-managerial subject matter experts (“SME”) for the VHA SME team. Further, the Agency did not provide a draft qualification standard and solicit feedback from the Union prior to beginning the “formal concurrence” process.

VA Handbook 5005/16, Part II, Appendix G17 (Development of Qualification Standards for VHA Positions Filled Under 38 U.S.C. §7401(3)) sets forth the Agency’s policies and procedures for developing qualifications standards for hybrid Title 38 (“HT38”) occupations. Specifically, paragraph 5(a) requires the following: “Qualification standards are developed by teams with representatives from the Office of Human Resources Management and Labor Relations and subject matter experts from VHA. At least 25% of the VHA team membership will be non-managerial members who are performing the work as a full time practitioner.” This requirement ensures that the VHA SME team is comprised of both managers and bargaining unit employees. Historically, in accordance with this requirement, the Agency has notified the Union of its intention to revise a HT38 qualification standard and asked the Union to provide a list of bargaining unit employees to serve as non-managerial participants on the VHA SME team. Here, the Agency failed to notify the Union of its intention to revise the PT/PTA qualification standards and failed to request a list of bargaining unit employees to serve on the VHA SME team.

5 U.S.C. §7113(a) grants national consultation rights to the Union. To that end, 5 U.S.C. §7113(b)(1) requires that the Union “(A) be informed of any substantive change in conditions of employment proposed by the agency, and (B) be permitted reasonable time to present its views and recommendations regarding the changes.” In failing to notify the Union of its intention to revise the PT/PTA qualification standards and afford the Union an opportunity to provide its views and recommendations prior to the “formal concurrence” process, the Agency has violated 5 U.S.C. §7113(b). Therefore, the Agency has also committed an unfair labor practice under 5 U.S.C. §7116(a), which requires the Agency to consult in good faith with a labor organization in accordance with Chapter 71 of Title 5 of the United States Code.

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. §7113, as set forth above, the Agency has failed to comply with Article 2 of the MCBA. 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 failing to notify and properly consult with the Union in revising the PT/PTA qualification standards, the Agency has repudiated its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes.

### **Violation**

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

- Article 2 of the MCBA: requiring the Agency to comply with federal law and regulations;
- Article 3 of the MCBA: requiring the Agency to maintain an effective, cooperative labor-management relationship with the Union;
- VA Handbook 5005/16: requiring the Agency to assemble a team of VHA subject matter experts, comprised of at least 25% non-managerial employees, to develop revised qualification standards;
- 5 U.S.C. §7113: requiring the Agency to afford national consultation rights to the Union when making substantive changes in conditions of employment;
- 5 U.S.C. 7116(a): requiring the Agency to consult in good faith with the Union;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

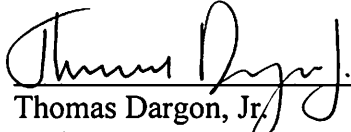
### **Remedy Requested**

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

- To return to the status quo ante until the Agency has properly notified NVAC and provided national consultation rights on revisions to the PT/PTA qualification standards;
- To cease and desist the further development or implementation of the revised PT/PTA qualification standards;
- To fully comply with its contractual obligations under Articles 2 and 3 of the MCBA and its statutory obligations under 5 U.S.C. §7113 and §7116(a);
- To fully comply with VA Handbook 5005/16;
- To agree to any and all other remedies appropriate 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 regarding this National Grievance, please contact the undersigned at AFGE Office of the General Counsel.



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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