

AFGE



Eugene Hudson, Jr.  
National Secretary-Treasurer

J. David Cox, Sr.  
National President

Augusta Y. Thomas  
NVP for Women & Fair Practices

7S/00363175

**NATIONAL GRIEVANCE**  
**NG-10/14/16**

**Date:** October 14, 2016

**To:** Kimberly McLeod  
Acting Executive Director, Labor-Management Relations  
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*

**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 the Union reasonable advance notice of and opportunity to bargain over changes in conditions of employment when it unilaterally implemented the case processing program known as BFFS 3.0**

**STATEMENT OF THE CHARGE**

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 ("NVAC" or 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 violations regarding the Agency's failure to provide the Union reasonable advance notice of and opportunity to bargain over changes in conditions of employment when it unilaterally implemented the case processing program known as BFFS 3.0.

On or about September 23, 2016, the Union was notified that the Agency unilaterally implemented a nationwide update to the Fiduciary Production Computer Data Base System, known as BFFS. The current version of the system, BFFS 3.0, with version 3.7 scheduled to launch on or about October 15, was implemented without giving the Union advance notice or opportunity to bargain. BFFS assists Agency employees, specifically Fiduciary Hub Field Examiners ("FE's"), with conducting investigations (or "field examinations") into matters



involving the administration of estates and the welfare of beneficiaries, or their dependents, who are under legal disability, or otherwise in need of supervision by the Veterans Service Center.

In doing so, the Agency violated 5 USC § 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the “Statute”) when it failed to notify NVAC of proposed changes in working conditions affecting two or more local unions, and failed to meet its bargaining obligations. Additionally, by unilaterally implementing BFFS 3.0, the Agency violated Articles 27, 47 and 66 of the MCBA, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

## **STATEMENT OF THE CASE**

### **Background**

On or about September 23, 2016, the Union was notified that the Agency unilaterally implemented a nationwide update to the Fiduciary Production Computer Data Base System, known as BFFS. The current version of the system, BFFS 3.0, was implemented without giving the Union proper notice and the opportunity to bargain, and is contrary to the provisions set forth in the Performance Appraisal Article of the MCBA.

BFFS is the program by which FE’s conduct field examinations in order to qualify an individual to act as fiduciary for a beneficiary deemed legally incapable of handling his or her own financial affairs. One consequence of the upgrade to version 3.0 is that it establishes production standards that are, according to incumbent FE’s, impossible to satisfy. For example, prior to the implementation of BFFS 3.0, the production standard for a journeyman FE was to process 1.25 cases per 8 hours worked. However, issues with BFFS 3.0 have increased the time to complete one case to more than 10 hours. As a result of decreased productivity, FE’s have either been threatened with termination or terminated.

Article 27 of the MCBA sets forth the framework by which the Union and the Agency seek to improve workplace performance. It provides, in relevant part:

### **Section 3 - Policy**

- C. Performance appraisals shall be fair and objective. They shall measure actual work performance over the entire rating period in relation to the performance requirements of the positions to which employees are assigned. Regardless of the source(s) of information used for performance appraisal, such information will be collected, used, and maintained in accordance with the Privacy Act.

### **Section 5 - Performance Standards**

- A. Objective criteria will be used to the maximum extent feasible in establishing and applying performance standards and elements. The rating official will establish and communicate in writing to employee(s) critical and non-critical elements and performance standards, at the beginning of the appraisal period (normally within 30 days). After initial issuance of

critical and non-critical elements and performance standards, the elements and standards will be provided annually, thereafter. All aspects of the performance plan, including numerical standards, measurement indicators, priorities, and weightings, if applicable, will be communicated in writing to the affected employees at the time the employees receive his/her performance elements and standards. The local union may provide input into any changes to performance standards and/or establishment of new performance standards.

- E. The local union shall be given reasonable written advance notice (no less than 15 calendar days) when the Department changes, adds to, or establishes new elements and performance standards. Prior to implementation of the above changes to performance standards, the Department shall meet all bargaining obligations.
- I. When the Department mandates national performance standards, all bargaining obligations with the Union shall be met at the national level.

#### **Section 8 - Process**

- E. When evaluating performance, the Department shall not hold employees accountable for factors which affect performance that are beyond the control of the employee. All changes in working procedures must be communicated to employees before they can be charged with errors. If the initial instruction was communicated in writing, the change should also be communicated in writing.

Article 47 of the MCBA sets forth the contractual obligations of the parties for mid-term bargaining at the local, intermediate, and national levels. Specifically, Section 4(B) requires that the Agency notify the NVAC President, or her designee, with a copy to the affected local unions, of any proposed changes in working conditions affecting the interests of two or more local unions. At present, the Union is aware of the following local unions affected by the Agency's implementation of BFFS 3.0: Local 611 (Louisville, Kentucky), Local 3 (Milwaukee, WI) and Local 2192 (St. Louis, Missouri), but reserves the right to supplement this list until the grievance is resolved.

Article 66 of the MCBA establishes the methods the Union and Agency shall utilize to measure the work of VBA employees. It states, in pertinent part,

#### **Section 1 - Scope**

- A. The provisions of this article shall apply to the application of the technology that may be used to administer, track, and/or measure the work of VBA bargaining unit employees.
- B. The application of such technology is governed by established policy of the Department as contained in the Department's notification to the affected employees and the Union. It is also governed by this Agreement and by applicable requirements under law and government-wide regulations.

- C. If the Department decides to modify or change its application of technology in a manner that triggers a duty to bargain, it will meet its contractual and statutory obligations.

### **Section 2 - Application of the Technology**

To the extent consistent with Section 1, such technology shall be applied in a manner that ensures validity, reliability, and attainability by most similarly situated employees.

- A. General - The application of the technology will be fair, equitable, consistent, and take into account matters beyond the control of the employee.

### **Violation**

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

- Article 27, Sections 3, 5 and 8 of the MCBA: requiring the Agency to develop fair and objective performance standards and not hold employees responsible for factors affecting performance that are beyond employees' control;
- Article 47, Section 4 of the MCBA: requiring the Agency to notify the NVAC President of proposed changes in working conditions affecting the interests of two or more local unions;
- Article 66, Sections 1 and 2 of the MCBA: requiring the Agency to ensure the validity and reliability of its technological programs and imposes an additional bargaining obligation when the Agency makes technological changes in the workplace;
- Sections 7116(a)(1) and (5) of the Statute: requiring the Agency to communicate with the Union concerning changes in conditions of employment, and further requiring the Agency to consult with the Union and negotiate in good faith; and
- 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 Agency agree to the following:

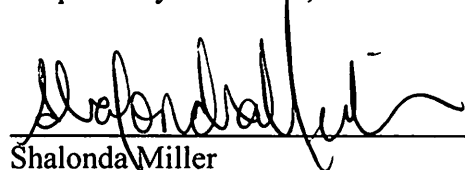
- To immediately schedule, meet and confer with the Union concerning its bargaining obligations and work with the Union until its bargaining obligations are met;

- To collaborate with the Union to develop a mitigation plan to address the effects of BFFS 3.0 on any affected employee's performance appraisal from 2015 to date;
- To fully comply with its contractual obligations under the MCBA;
- 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 feel free to contact me at 202-639-6424.

Respectfully submitted,



---

Shalonda Miller  
Staff Counsel, National VA Council  
American Federation of Government  
Employees, AFL-CIO  
80 F Street, NW  
Washington, DC 20001  
Tel: 202-639-6424  
Fax: 202-379-2928  
[Shalonda.miller@afge.org](mailto:Shalonda.miller@afge.org)

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