



NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

NATIONAL GRIEVANCE

NG-3/26/18

Date: March 26, 2018

To: Kimberly McLeod
Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420
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 against the Department of Veterans Affairs for failing to satisfy bargaining obligations and unilaterally implementing ePerformance Appraisal System

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 (“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 failing to satisfy bargaining obligations and unilaterally implementing the Electronic Performance Appraisal System (“ePerformance”). To date, VA has failed to remedy this violation, and as such, continues to violate contract and law.

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

STATEMENT OF THE CASE

Background

On September 19, 2017, the Department of Veterans Affairs, Office of Labor-Management Relations (“the Agency”) notified the Union that it intended to implement ePerformance. Upon information and belief, ePerformance enables employees to review performance plans and complete performance appraisals in a web-based platform. It also changes the way employees are

notified of changes in performance standards and performance plans. On October 17, 2017, the Union notified the Agency that the Parties already negotiated the issue of performance appraisals in Article 27 – Performance Appraisal of the 2011 Master Agreement, signed on March 15, 2011. Further, the Union stated that Article 27 did not contain a reopener provision and that changes to Article 27, including those stemming from ePerformance, needed to be addressed in term negotiations. In accordance with Section 3 of the Duration of Agreement provision, the Union does not consent to add to, amend, or otherwise modify Article 27 outside of term negotiations. Despite the Union’s written declination to negotiate a midterm proposal on a permissive subject of bargaining, since the performance management system is covered by Article 27, the Agency implemented ePerformance in the OI&T service at multiple facilities.

In unilaterally implementing ePerformance, the Agency violated the Duration of Agreement provision and committed an unfair labor practice under 5 U.S.C. §7116(a)(1) and (a)(5). Additionally, 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. §7116, as set forth above, the Agency also failed to comply with Article 2. Further, 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 unilaterally implementing ePerformance, even after the Union provided written notice that it declined to reopen Article 27, the Agency renounced 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;
- Duration of Agreement provision of the MCBA: requiring the Agency to obtain the Union’s consent to reopen an article of the term agreement;
- 5 U.S.C. §7116(a)(1) and (a)(5): requiring the Agency to consult and negotiate 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 cease and desist the further implementation of ePerformance;
- To return to the status quo ante;
- To fully comply with its contractual obligations under Articles 2, 3, and the Duration of Agreement provision of the MCBA, as well as its statutory obligations under 5 U.S.C. §7116(a)(1) and (5);
- 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, please contact the undersigned at AFGE Office of the General Counsel. The undersigned representative is designated to represent the Union in all matters related to the subject of this National Grievance.



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Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC