



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-9/18/19

Date: September 18, 2019

To: Tracy Schulberg
Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
tracy.schulberg@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 its failure to notify the Union and follow VA policy regarding the development of a revised qualification standard for the Medical Support Assistant occupation

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”), the 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 its failure to notify the Union and follow VA policy regarding the development of a revised qualification standards for the Medical Support Assistant occupation. 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, 38 U.S.C. §7403, 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 or about August 1, 2019, the Agency implemented VA Handbook 5005/17 (Appendix G45), which included a revision to the qualification standard for GS-0679 Medical Support Assistants (“MSA”). The Union was not notified that the Agency intended to revise the MSA qualification standard. The Agency did not solicit the Union to designate subject matter experts (“SME”) to participate in the drafting and development of the revised qualification standard.

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 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 participants on the SME team. Here, the Agency failed to notify the Union of its intention to revise the MSA qualification standard and failed to request a list of bargaining unit employees to serve on the SME team. This further violates the requirement in 38 U.S.C. §7403(h) that the Agency collaborate with the Union concerning changes affecting promotion and advancement within HT38 occupations.

In failing to notify and provide the Union an opportunity to bargain prior to implementing a revision to the MSA qualification standard, the Agency committed an unfair labor practice under 5 U.S.C. §7116(a). The Agency also violated Article 47, Section 2, and Article 49, Section 4, which set forth the Parties' responsibilities regarding mid-term bargaining at the national level.

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(a), 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 failing to notify, consult, and negotiate with the Union prior to implementing the revised MSA qualification standard, 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:

- VA Handbook 5005/16: requiring the Agency to assemble a team of SMEs, comprised of at least 25% non-managerial employees, to develop revised qualification standards;
- 38 U.S.C. §7403(h): requiring the Agency to collaborate with the Union regarding changes affecting the promotion and advancement of HT38 employees;
- 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;
- Articles 47 and 49 of the MCBA: requiring the Agency to comply with set forth agreed-upon procedures for mid-term bargaining and to complete bargaining obligations before implementing changes to conditions of employment;
- 5 U.S.C. §7116(a): requiring the Agency to satisfy bargaining obligations 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 do the following:

- To rescind VA Handbook 5005/17 (Appendix G45) for AFGE bargaining unit employees;
- To return to the *status quo ante*;
- To comply with VA Handbook 5005/16 regarding the development of revised qualification standards for HT38 occupations;
- To comply with its contractual obligations under Articles 2, 3, 47, and 49 of the MCBA, as well as its statutory obligations under 38 U.S.C. §7403(h) and 5 U.S.C. §7116(a);
- To distribute an electronic notice posting to all bargaining unit employees concerning the Agency's unfair labor practice;
- To make-whole any bargaining unit employee adversely affected by the Agency's improper implementation of the revised MSA qualification standard, including back pay, interest, and attorney's fees;
- 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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cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC