



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-3/2/20

Date: March 2, 2020

To: Kevin Nelson
Labor & Employee Relations Specialist
Office of Human Capital Management
Veterans Benefits Administration
U.S. Department of Veterans Affairs
kevin.nelson2@va.gov
sent via email 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 concerning the Legacy Appeals Team Production Challenges

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 Department of Veterans Affairs (“Agency” or “VA”) for failing to satisfy bargaining obligations with the Union concerning the Legacy Appeals Team Production Challenges. To date, the Agency has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the VA violated Articles 2, 3, 47, and 49 of the MCBA, 5 U.S.C. §7116(a), and any and all other relevant articles, laws, regulations, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On or about January 24, 2020, the Veterans Benefits Administration (“VBA”) distributed an email notification to the field entitled “Legacy Appeals Team Production Challenges.” It established terms and conditions governing two production challenges: (1) Notice of Disagreement Challenge for legacy appeals teams, and (2) Decision Review Officers Challenge for individuals assigned to legacy appeals teams. This constitutes a change in conditions of employment. The

Agency did not provide advanced notice to the Union. In doing so, the Agency failed to satisfy its bargaining obligations with the Union.

In refusing to notify, consult, and negotiate in good faith with the Union prior to implementing the Legacy Appeals Team Production Challenges, the Agency 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 failing to notify, consult, and negotiate with the Union prior to implementing the Legacy Appeals Team Production Challenges, the Agency renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes. Finally, the Agency violated Article 47, Section 2, and Article 49, Section 4, which set forth the Parties' responsibilities regarding mid-term bargaining at the national level.

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;
- Articles 47 and 49 of the MCBA: requiring the Agency to comply with agreed-upon procedures for mid-term bargaining at the national level;
- 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

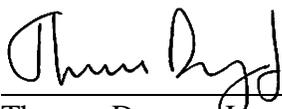
The Union asks that, to remedy the above situation, the VA agree to the following:

- To cease and desist implementation of the Legacy Appeals Team Production Challenges;
- To return to the *status quo ante* until bargaining obligations are met;
- To fully comply with its contractual obligations under Articles 2, 3, 47, and 49 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a);
- To distribute an electronic notice posting to all bargaining unit employees concerning the Agency's failure to satisfy bargaining obligations with the Union prior to implementing the Legacy Appeals Team Production Challenges;
- To make-whole any bargaining unit employee adversely affected by the Agency's improper implementation, 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. This is the third National Grievance filed against the Agency concerning the unilateral implementation of production challenges affecting AFGE bargaining unit employees in VBA.¹ Despite the Union objecting to these production challenges through the grievance process, the Agency continues to unilaterally implement additional production challenges in violation of law and contract, and upon information and belief, will continue to do so in the future. Therefore, this National Grievance shall cover any future production challenges implemented by VBA.

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
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Tracy Schulberg, Acting Executive Director, VA-LMR
Letricia Jackson, VA-LMR
L'Tosha Condah, VA-LMR

¹ See NG-5/3/19 (Independence Day Challenge) and NG-7/11/19 (Labor and Columbus Day Challenges).