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AFGE NVAC/AFL-CIO

# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE

NG-04/14/2020

**Date:** April 14, 2020

**To:** Tracy Schulberg  
Executive Director  
Office of Labor-Management Relations  
U.S. Department of Veterans Affairs  
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[tracy.schulberg@va.gov](mailto:tracy.schulberg@va.gov)  
*Sent via electronic mail only*

**From:** Christopher Zatrutz, 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 ordering bargaining unit employees to enroll as DEMPS volunteers.

## 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 Department for ordering bargaining unit employees to enroll as DEMPS volunteers. To date, the Department has failed to remedy this violation and as such continues to violate past practice, VA Handbook 0320.03, the MCBA, and federal law.

Specifically, the Department violated Articles 2, 3, 47, and 49 of the MCBA; VA Handbook 0320.03; 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 March 11, 2020, the World Health Organization declared COVID-19 a pandemic. (Attachment A). On March 13, 2020, President Trump issued a proclamation declaring a national emergency. (Attachment B). As a result of the pandemic, on March 26, 2020, the Department issued a memorandum ordering all Veterans Health Administration Central Office (“VHACO”)



clinical staff to enroll in the Disaster Emergency Medical Personnel System (“DEMPS”). (Attachment C). The Department’s memorandum does not include any bargaining unit employees.

VHACO clinical staff are not members of the bargaining unit that the Union represents. However, several Department facilities<sup>1</sup> have ordered clinical staff to enroll as DEMPS volunteers, thereby extending the scope of the Department’s memorandum. What’s more, enrollment in DEMPS is strictly voluntary. (Attachment D). Therefore, the Department’s mandate that bargaining unit employees enroll as DEMPS volunteers violates the Department’s own memorandum, handbook, the MCBA, and federal law.

### **A. Mandatory Enrollment**

VA Handbook 0320.03 prescribes the process for employees to enroll in DEMPS. An employee seeking to enroll in DEMPS is a volunteer. To enroll, an employee “may request registration as a DEMPS volunteer in one of two ways, either ‘on line’ or by use of a paper form.” (Attachment D at 8). The handbook does not provide for enrollment to be initiated by the Department or for enrollment to be mandatory.

Contrary to the handbook, several facilities have issued orders to clinical staff that enrollment as a DEMPS volunteer is mandatory. For instance, bargaining unit employees at the Asheville VA Medical Center were given notice that VHACO clinical staff are required to enroll in DEMPS, although employees at that facility are not VHACO clinical staff. (Attachment E). Despite this, bargaining unit employees at the facility are being ordered to register as DEMPS volunteers. At the VA Sierra Pacific Network (“VISN 21”), which accounts for eight medical centers, all physicians, nurse practitioners, physician assistants, registered nurses, and pharmacists within ten different practice areas were ordered to register as DEMPS volunteers. (Attachment F).

The Department is improperly ordering bargaining unit employees to claim themselves as volunteers, when they are not, while misrepresenting this fact to the media. (Attachment G). By ordering bargaining unit employees to enroll as DEMPS volunteers, the Department extended the scope of its memorandum and violated both VA Handbook 0320.03 and past practice requiring that enrollment in DEMPS be voluntary.

### **B. Failure to Bargain**

Articles 47 and 49 of the MCBA require the Department to bargain with the Union over changes to conditions of employment. Additionally, under section §7116(a)(1) and (5) the Union “must be given adequate notice by agency management and an opportunity to request bargaining over the impact and implementation of changes in working conditions affecting unit employees.” *Gen. Servs. Admin and AFGE*, 15 FLRA 22, 24 (1984) (citing *Internal Revenue Service*, 10 FLRA 326 (1982)).

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<sup>1</sup> Affected facilities include, for example, the Asheville VA Medical Center, Phoenix VA Health Care System, VA Southern Nevada Healthcare System, Lebanon VA Medical Center, and VA Member Services in Topeka, KS.

Here, the Department unilaterally ordered clinical staff to enroll as DEMPS volunteers. Enrollment in DEMPS has always been voluntary. Such a change is more than *de minimis* as upwards of 100,000 bargaining unit employees will be subject to deployment to areas of the country hardest hit by the pandemic. The Department has already deployed DEMPS personnel to facilities in New Orleans, Louisiana where 423 patients have contracted the virus. (Attachments G & H). Therefore, the Department's failure to bargain the procedures and appropriate arrangements of its implementation of DEMPS is violative of the MCBA and federal law.

Under section §7106(a)(2)(D), the Department has the right "to take whatever actions may be necessary to carry out the agency mission during emergencies." However, this right does not remove the obligation to bargain because the Department's rights under section 7106(a) "are subject to the union's right to bargain over procedures, under section 7106(b)(2), and appropriate arrangements, under section 7106(b)(3) of the Statute." *NAGE, Local R1-203 & U.S. Dep't of the Interior*, 55 FLRA 1081, 1089 (1999). Therefore, regardless of the Department's right to take necessary action during emergencies, the Department was nonetheless required to bargain the procedures and appropriate arrangements of its implementation of DEMPS.

By failing to bargain the procedures and appropriate arrangements of its implementation of DEMPS, the Department committed an unfair labor practice under section 7116(a)(1) and (5). In doing so, the Department also violated Article 2 of the MCBA, which requires the Department to comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Finally, by failing to consult and negotiate in good faith with the Union, the Department is in violation of Article 3 of the MCBA, which 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.

## **Violation**

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

- Article 2 of the MCBA: requiring the Department to comply with all federal law and regulations;
- Article 3 of the MCBA: requiring the Department to maintain an effective, cooperative labor-management relationship with the Union;
- Article 47 and 49 of the MCBA: requiring the Department to bargain with the Union over changes to conditions of employment;
- 5 U.S.C. §7116(a)(1) and (5): requiring the Department to consult and negotiate in good faith with the Union;
- VA Handbook 3020.03: prescribing the process to enroll as a DEMPS volunteer;
- Any and all other relevant articles, laws, rules, regulations, customs, and past practices not herein specified.

## **Remedies Requested**

To remedy the above violations, the Union asks that the Department agree to the following:

1. To immediately cease requiring bargaining unit employees to enroll as DEMPS volunteers;
2. To immediately provide bargaining unit employees with the option to opt-out of DEMPS;
3. To immediately inform all bargaining unit employees that enrollment as a DEMPS volunteer is strictly voluntary;
4. To cease and desist further violations of the VA Handbook, MCBA and law;
5. 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).
6. To post an electronic notice, signed by the VA Secretary, to all VA bargaining unit employees that the department violated the MCBA and law and that the Department will refrain from further violations of the MCBA and law;
7. To make whole the Union and any employee adversely affected by the Department's violations, including, but not limited to, rescission of any discipline related to an employee's failure to enroll;
8. To pay reasonable attorney's fees and litigation costs under 5 U.S.C. §5596; and
9. 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. The undersigned is the designated representative for this grievance. If you have any questions regarding this National Grievance, please contact the undersigned at AFGE Office of the General Counsel.



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