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**NATIONAL GRIEVANCE**  
**NG-10/26/16**

**Date:** October 26, 2016

**To:** Kimberly McLeod  
Acting Executive Director  
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Office of Labor-Management Relations  
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*Sent via electronic mail only*

**From:** Thomas Dargon, Jr., Staff Counsel, National Veterans Affairs Council (#53), American Federation of Government Employees, AFL-CIO

**RE:** **National Grievance filed against the Department of Veterans Affairs for violating contractual obligations and federal law by failing to fully collaborate with the Union in revising the promotion and advancement system for hybrid Title 38 employees.**

**STATEMENT OF CHARGES**

Pursuant to the provisions of Article 45, Section 3 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 ("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 violating contractual obligations and federal law by failing to fully collaborate with the Union in revising the promotion and advancement system for hybrid Title 38 employees ("HT38 employees").

The Agency, by and through its representatives and/or agents, was required to plan, develop, and implement revisions to the promotion and advancement system for HT38 employees in collaboration with and through the participation of Union representatives. However, the Agency failed to do so.

Specifically, the VA violated Articles 2, 3, and 56 of the MCBA, 38 U.S.C. 7403(h), and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.



## STATEMENT OF THE CASE

### **Background**

On or about March 28, 2016, the Agency began notifying the Union that it intended to hold Rapid Process Improvement Workshops (“RPIWs”) regarding the MyVA Critical Staffing Initiative.<sup>1</sup> Over the next several months, the Agency held individual RPIWs within each of the Department’s eighteen Veteran Integrated Service Networks (“VISNs”).

On September 27, 2016, Steven Flatley, a representative from the VA Office of Labor-Management Relations, provided the Union, via email, with a document appearing to summarize a series of initiatives purportedly resulting from each of the sixteen RPIWs that, as of that date, had been conducted by the Agency. For each of these sixteen VISNs, the Agency provided the Union with two lists: (1) Action Plans, and (2) Plan, Do, Study, Act (“PDSAs”).<sup>2</sup> In his email, Mr. Flatley explained that “Action Plans and [PDSAs] are created at the end of the RPIW. The Action Plans are items that need to be addressed at the national level. The PDSAs are local items that can be addressed at the VISN and facility levels.” In identifying the Action Plans, which are described as “items that need to be addressed at the national level,” the Agency did not involve the Union. Instead, based on their recollection and interpretation of discussions held at the RPIWs, Agency representatives unilaterally planned and developed these Action Plans.

To begin implementing one of its Action Plans, the Agency recently notified the Union of its decision to eliminate the use of professional standards boards (“PSBs”) in the promotion and advancement system governing HT38 employees. While PSBs were only mentioned in six of the sixteen VISN-specific Actions Plans, the Agency unilaterally decided to eliminate PSBs for HT38 employees. This amounts to one of the most significant changes to the HT38 personnel system since Congress first created that category of VA personnel in 1983.<sup>3</sup> Nonetheless, the Agency failed to involve the Union in this decision.

38 U.S.C. §7403(h) requires the Agency to work in conjunction with the Union when making changes to the promotion and advancement system governing HT38 employees appointed under 38 U.S.C. §7401(3). Specifically, §7403(h)(1) states, “Each such system shall be planned, developed, and implemented in collaboration with, and with the participation of, exclusive employee representatives of such occupational category of employees.” 38 U.S.C. §7403(h)(1). As the statute states, the Agency must collaborate with the Union in planning, developing, and implementing the new HT38 personnel system. By unilaterally deciding to eliminate PSBs, the Agency failed, entirely, to collaborate with the Union in the planning process, as required by 38 U.S.C. §7403(h)(1).

Once this decision was unilaterally made, the Agency provided the Union with draft policy revisions to the various VA handbooks affected by the decision to eliminate PSBs. These revisions, in large part, reflected the Agency’s decision to vest appointment and promotion

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<sup>1</sup> The Critical Staffing Initiative, overseen by the VA Office of Human Resources and Administration, is one of the twelve “breakthrough priorities” announced by the Secretary in January 2016 as part of his plan to “transform” the Department. The Secretary’s plan is better known as “MyVA.”

<sup>2</sup> Each RPIW was comprised almost entirely of managers and human resources officials.

<sup>3</sup> Veterans’ Health Care Amendments of 1983, Pub.L. No. 98–160, secs. 201, 203(a), 97 Stat. 993, 1000, codified as amended at 38 U.S.C. §§ 7401(3), 7403(f)(1), (2).

authority with Human Resources Officers and various management officials.<sup>4</sup> As such, the Agency unilaterally decided how it would reform the personnel system without the use of PSBs, and therefore, failed to collaborate with the Union in the development of the new personnel system, as required by 38 U.S.C. §7403(h)(1). In sum, the Union was not involved in the process until such time as the Agency had already decided to eliminate PSBs and to replace them with a newly-revised, management-centered HT38 promotion system.

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. Likewise, Article 56, Section 2(A) of the MCBA explicitly requires that the Agency comply with 38 U.S.C. §7403 when changing the promotion and reconsideration process for HT38 employees in VA Handbook 5005, Part II, Chapter 4. Therefore, in violating 38 U.S.C. §7403(h), as set forth above, the Agency has failed to comply with Articles 2 and 56 of the MCBA. Additionally, 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 refusing to collaborate with the Union in eliminating PSBs and, instead, deciding to replace them with a promotion and advancement system that is controlled entirely by management officials, the Agency has repudiated its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes.

Executive Order 13522, signed by President Barack Obama on December 9, 2009, requires government agencies to "allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106." E.O. 13522, Sec. 3(a)(ii). The Union had no pre-decisional involvement in the elimination of PSBs, and as such, the Agency has also violated Executive Order 13522.

## **Violation**

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

- 38 U.S.C. §7403(h), requiring the Agency to collaborate with the Union to plan, develop, and implement changes to the advancement and promotion system for HT38 employees;
- Articles 2 and 56 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;
- Executive Order 13522, requiring the Agency to offer pre-decisional involvement to the Union in all workplace matters;
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

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<sup>4</sup> PSBs, which ensured neutrality in the promotion and advancement of HT38 employees, were staffed with a panel of employees actively working within the occupation at issue. Naturally, the Union has serious concerns with a personnel system that operates entirely under the direction and control of management officials. The Union voiced these concerns during an in-person meeting with the Agency on September 27, 2016 in Tampa, FL.

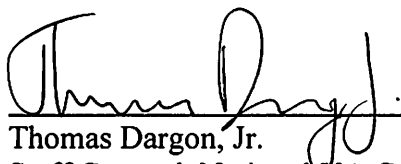
## Remedy Requested

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

- Return to the status quo ante until the Agency has properly collaborated with the Union concerning any proposed changes to the HT38 personnel system;
- Cease and desist the planning, development, and implementation of any change to the HT38 personnel system;
- Fully comply with its contractual obligations under the MCBA;
- Fully comply with all applicable federal laws, rules, and regulations;
- 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 the undersigned at AFGE Office of the General Counsel.



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