



Out of Many/**One Union**
AFGE NVAC/AFL-CIO

NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-11/15/18

Date: November 15, 2018

To: Steven Novy
Acting Executive Director
Office of Labor-Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420
kimberly.mcleod@va.gov
Sent via electronic mail only

From: Michael A. Gillman, 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 unilateral implementation of a change to grievance and arbitration procedures by submission of pre-hearing briefs to arbitrators.

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 of Veterans Affairs, for its unilateral implementation of a change to grievance and arbitration procedures by submission of pre-hearing briefs to arbitrators in violation of the Article 44 of the Master Agreement and without notice and bargaining with the Union in violation of Articles 2, 47, and 49 of the Master Agreement and 5 U.S.C. §7114(a)(4) and §7116(a)(1) and (5).

STATEMENT OF THE CASE

Background

The Agency, through its attorneys, has begun a practice of submitting pre-hearing briefs to arbitrators in advance of hearings on grievances challenging disciplinary action taken under the authority of the VA Accountability and Whistleblower Protection Act of the 2017. Some attorneys



have explained to arbitrators that they are being required to file such pre-hearing submissions by their superiors at the Department. In all cases examined by the undersigned, the Agency's representatives have submitted the pre-hearing briefs without first consulting with the Union and without such a requirement from the arbitrators. Two examples of these pre-hearing briefs have been included for reference. *See* Exhibits 1 & 2.

This practice violates Article 44 of the Master Agreement, which does not provide a right to make pre-hearing submissions (other than mutual submission of a stipulated issue) and affirmatively vests the *arbitrator* with the authority to determine arbitration procedures. The Agency's actions have usurped the arbitrator's authority to determine the procedures to be applied by its unilateral submissions.

Furthermore, this change to the arbitration process, a mandatory subject of bargaining, was made without notice and bargaining with the Union as required by federal law and the Master Agreement. Article 49, Section 4 of the Master Agreement requires that the Agency notify and bargain with the Union over changes to conditions of employment. Notice must be given *prior to* the implementation of such changes. If the Union elects to bargain over the proposed changes, the parties must bargain in good faith. The procedures for mid-term bargaining are set forth in Article 47 of the Master Agreement. The Federal Service Labor-Management Relations Statute provides the same requirement and makes it an unfair labor practice to fail to bargain in good faith with the Union. *See* 5 U.S.C. §7114(a)(4); §7116(a)(1) & (5). The Agency did not notify the Union as required by the Master Agreement and federal law and instead unilaterally implemented the changes to the arbitration procedure discussed above. By doing so the Agency has failed in its obligation to bargain in good faith with the Union over changes to conditions of employment.

Violation

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

- Article 2, Section 1 of the MCBA: requiring the Agency to comply with applicable federal statutes in the administration of the MCBA;
- Article 44 of the MCBA: governing arbitration procedures between the parties.
- Article 47, Sections 1 and 2 of the MCBA: providing a contractual obligation to bargain with the Union; and
- Article 49, Section 4 of the MCBA: requiring advance notice of changes to conditions of employment and bargaining over the same;
- Section 7116(a)(1) of the Federal Service Labor-Management Relations Statute: prohibiting the Agency from interfering with its employees' rights to collectively bargain;
- Section 7116(a)(5) of the Federal Service Labor-Management Relations Statute: requiring the Agency to negotiate in good faith;

- Any and all relevant articles, laws, regulations, customs, and past practices not herein specified.

Remedy Requested

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

- To return to the *status quo ante*
- To cease and desist any implementation of the policies described above;
- To notify arbitrators in any pending case that the submission is being rescinded;
- To post, and distribute to all affected employees via electronic mail, an appropriate notice signed by the highest appropriate VA official acknowledging the Agency's illegal conduct and affirming its obligations under the Statute and the contract; and
- To agree to any and all other remedies appropriate in this matter.

Time Frame and Contact

This is a National Grievance. 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 contact the undersigned at (202) 639-6424.

Submitted by,



Michael A. Gillman
Staff Counsel, National VA Council
American Federation of Government Employees, AFL-CIO
80 F St. NW
Washington, D.C. 20001
Tel.: (202) 639-6424
Fax: (202) 379-2928

Cc: Alma L. Lee, President, NVAC
Ibidun Roberts, NVAC Supervisory Attorney
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, NVAC