



NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-11/5/18

Date: November 5, 2018

To: Kimberly McLeod
Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420
kimberly.mcleod@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 U.S. Department of Veterans Affairs for failing to comply with performance appraisal procedures for Contact Representatives in the VHA Office of Member Services

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 Agency for failing to comply with performance appraisal procedures for Contact Representatives in VHA Member Services in the Veterans Health Administration Office of Member Services (“VHA Member Services”). To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the VA violated Articles 2, 3, 17, and 27 of the MCBA, The Privacy Act of 1974, VA Handbook 6300.5, and any and all other relevant articles, laws, regulations, and past practices not herein specified.

STATEMENT OF THE CASE

Background

AFGE represents all bargaining unit employees in VHA Member Services. This includes virtual employees and those stationed at VA facilities with VHA Member Services offices, such as Atlanta, GA, Topeka, KS, Hot Springs, SD, Waco, TX, and Canandaigua, NY.

Contact Representatives, GS-0962, are responsible for initiating, receiving, and responding to inquiries with Veterans, family members, and legal representatives concerning insurance and billing procedures, eligibility and benefits counseling, pharmacy administrative support, and other customer support issues. To perform their duties, Contact Representatives rely on various software and telephone processing systems, including AVAYA, CRM, and DTERM360. Employees access these systems with unique log-in credentials. Due to chronic, ongoing technical issues, such as system errors, network outages, and poor audio quality, Contact Representatives experience frequent delays when completing their work. These technical issues often result in increased Average Handling Times, which is Measure 1 in the Critical Element of “Teamwork.” Therefore, through no fault of their own, it is more difficult for employees to maintain or exceed the cumulative averages set forth in their performance standards and to achieve performance awards.

Further, the systems used to house and retrieve performance-related data on Average Handling Times of telephone calls constitute a “system of records” for purposes of the Privacy Act, 5 U.S.C. §552a. The Agency failed to publish notice in the Federal Register informing employees of the location, principal purpose, and routine uses for these records. By failing to do so, the Agency violated the Privacy Act, 5 U.S.C. §552a(e)(4), and VA Handbook 6300.5 (Procedures for Establishing and Managing Privacy Act System of Records).

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. §552a, 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. In committing these violations of contract, federal law, and Department-wide policy, the Agency renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes. Article 27 of the MCBA requires that the performance appraisal process be based on fair, equitable, and objective criteria. Section 8(E) further requires that the Agency not hold employees accountable for factors affecting performance that are beyond the control of that employee. By appraising Contact Representatives performance based on inflated Average Handling Times, the Agency has violated Article 27.

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;
- Article 17 of the MCBA: requiring the Agency to protect employees’ privacy rights;
- Article 27 of the MCBA: requiring that the Agency use fair and objective criteria and not hold employees accountable for factors affecting performance that are beyond their control;
- The Privacy Act of 1974 and VA Handbook 6300.5: requiring the Agency to satisfy certain requirements in establishing and maintaining information within a system of records;
- 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 fully comply with its contractual obligations under Articles 2, 3, 17, and 27;
- To fully comply with the Privacy Act of 1974 and VA Handbook 6300.5;
- To amend the performance appraisal of any bargaining unit employee impacted by inflated Average Handling Times;
- To make-whole any bargaining unit employee adversely affected by this matter, 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