



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-12/21/19

Date: December 21, 2019

To: Kevin Nelson
Labor & Employment Relations Specialist
Office of Human Capital Management
Veterans Benefits Administration
Department of Veterans Affairs
Kevin.nelson2@va.gov
Sent via email only

From: Christopher Zatrutz, Staff Counsel, National Veterans Affairs Council (#53) (“NVAC”), American Federation of Government Employees, AFL-CIO (“AFGE”)

RE: **National Grievance against Department of Veterans Affairs for violating the Master Agreement and federal law in its failure to provide requested information**

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 failing to respond to the Union’s request for information and provide the information and documents requested themselves. To date, the Department has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the Department violated Articles 2 and 49, 5 U.S.C. §7116(a)(1), (5), and (8) and §7114(b)(4), and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On May 22, 2019, the Union filed a National Grievance with the Department for announcing and implementing changes to voluntary overtime for Veterans Services Representatives (VSRs). (Attachment A). On July 7, 2019, the Department denied the Union’s National Grievance. (Attachment B). On July 16, 2019, the Union invoked arbitration of the May 22, 2019 grievance. (Attachment C).



Accordingly, on November 8, 2019, the Union requested information from the Department in furtherance of its representational obligation to protect and enforce the Master Agreement in the arbitration. (Attachment D). Specifically, the Union requested the following information in order to prepare for the arbitration:

1. Any and all materials of the determination from each Regional Office of “high performers” eligible for unlimited overtime under April 24, 2019 Updated OT Guidance;
2. Overtime Rosters from each Regional Office for the period April 24, 2019 – April 30, 2019;
3. A listing of bargaining unit employees that performed voluntary overtime “to promulgate and authorize rating related EP’s only and final ratings claims for IDES” during the period April 24, 2019 – April 30, 2019;
4. The number of voluntary overtime hours worked “to promulgate and authorize rating related EP’s only and final ratings claims for IDES” for each of the employees listed in #3 for the period April 24, 2019 – April 30, 2019.
5. A listing of bargaining unit employees that were meeting their standards (in comparison to those “exceeding their standards”) for the period April 24, 2019 – April 30, 2019.

(Attachment D).

The Union stipulated that the deadline for the Department’s compliance was due more than a month later on December 20, 2019. (Attachment D). To date, the Department has failed to respond to the Union’s request, let alone provide the information and documents requested.

Violation

Section 7114(b)(4) of the Statute obligates the Department to furnish to the Union “upon request and to the extent not prohibited by law, information that is necessary to enable the union to fulfil its representational functions.” *U.S. Dep’t of Transportation Fed. Aviation Admin. New England Region Burlington, Massachusetts*, 38 FLRA 1623, 1628–29 (1991). Included in those representational functions are the Union’s preparations necessary for representing employees in arbitration. *See id.* at 1629. Here, the Union provided a valid information request to the Department stating its particularized need for the information – namely, to prepare for arbitration of the grievance. (Attachment D). Thus, the Union is entitled to the requested information and the Department’s failure to furnish it amounts to an unfair labor practice.

Failure to Respond

To date, the Department has failed to respond to the Union’s request for information. The Authority has long-held that “agencies have a duty to respond to information in a timely manner and that an untimely response is a violation of the Statute.” *Dep’t of the Treasury, IRS, Office of the Chief Counsel*, 71 FLRA 281, 283 (2019) (IRS). *See SSA, Balt., Md.*, 60 FLRA 674, 679 (2005) (“a failure to respond to . . . an information request is an independent violation of § 7116(a)(1) and (5) of the Statute”). The Authority has found a delay of slightly less than one-month to be unreasonable and an unfair labor practice. *See IRS*, 71 FLRA 281 at 284 (citing

Dep't of Transportation, FAA, Fort Worth, Texas, 57 FLRA 604, 607 (2001)). Here, the Union submitted its request over a month ago (42 days). Therefore, the Department's failure to respond – not merely its delay in responding – is unreasonable.

Failure to Provide Information

To date, the Department has failed to provide the Union with the information and documents that it requested. The Authority has held that an agency has the responsibility to timely respond to an information request and a separate duty to provide the requested documents. *See IRS*, 71 FLRA 281 at 283. Here, the Department has failed to respond to the Union's request and, consequently, has failed to provide the information and documents requested. Therefore, the Department's failure to furnish the requested information and documents amounts to a separate unfair labor practice. *See Dep't of Defense Dependents Schools Washington, D.C., & Dep't of Defense Dependents Schools, Germany Region*, 28 FLRA 202, 205 (1987) (holding that the failure to provide requested information violates section 7116(a)(1), (5) and (8) of the Statute).

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 federal law and regulations;
- Article 49 of the MCBA: requiring the Department to have due regard for the obligations imposed by 5 U.S.C. Chapter 71;
- 5 U.S.C. §7116(a)(1), (5), and (8): requiring the Department to provide data that is normally maintained in the regular course of business and reasonably available and necessary for full and proper discussion, understanding, and negotiation of collective bargaining subjects;
- 5 U.S.C. §7116(a)(1) and (5): requiring the Department to respond to an information request.
- Any and all other relevant articles, laws, 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:

- To immediately provide the requested information or a response that it does not exist;
- To fully comply with its contractual obligations under Article 2 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a) and §7114(b)(4);
- 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;
- To make whole the Union and any employee affected by the Department's violations;
- 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.



Christopher Zatrutz
Staff Counsel, National VA Council
American Federation of Government Employees, AFL-CIO
80 F Street, NW
Washington, DC 20001
Tel: 202-639-6424
Fax: 202-379-2928
Christopher.Zatrutz@afge.org

cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervising Attorney, AFGE/NVAC
Tracy Schulberg, Acting Executive Director, VA-LMR