



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-2/21/18-Amended

Date: February 22, 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: **Ibidun Roberts**, Supervisory Attorney, National Veterans Affairs Council (#53) (“NVAC”), American Federation of Government Employees, AFL-CIO (“AFGE”)

RE: National Grievance against the Department of Veterans Affairs for violation of Duration of Agreement provision regarding numbers of members on the bargaining team.

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 violation of the Duration of Agreement provision on arrangements for contract renegotiations. To date, the VA has failed to remedy this violation, and as such, continues to violate the MCBA, federal law, and Agency policy.

Specifically, the VA violated the Duration of Agreement Section and Article 47 of the MCBA, 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 December 15, 2017, the Deputy Secretary for the Department of Veterans Affairs, Thomas G. Bowman, issued a letter to NVAC President, Alma Lee, officially notifying the Union of the Agency’s intention to renegotiate the Master Agreement. In this letter, Mr. Bowman named Mark Frassinelli as the Agency’s Chief Negotiator. The Master Agreement’s Duration of



Agreement Section requires the parties to use the arrangements of Article 47, Mid-Term Bargaining, to renegotiate the Master Agreement. However, due to the timing of the Agency's notice – during the holiday season and a period notorious for use-or-lose absences – Ms. Lee sent a letter, dated December 20, 2017, to Mr. Frassinelli concerning the scheduling of the Agency's required briefing. Symbolic of the absences warned by Ms. Lee, Mr. Frassinelli did not respond to the letter until January 11, 2018. In his response, Ms. Frassinelli agreed to the extension of the briefing but would not agree to extend the other timeframes under Article 47. Due to the Agency's inaction in failing to respond to Ms. Lee's concerns in a timely manner and failing to schedule the briefing within the required 20 workdays, Ms. Lee noted the Agency's constructive granting of the extension and opposed Mr. Frassinelli's insistence on further violations, such as shortening the timeframe for Union proposals following the briefing.

On January 23, 2018, Designated Alternate Chief Negotiator, Douglas Huth, then sent a letter insisting that the Agency would unilaterally provide a "telephonic information session," and declared that "all dates would run from [the] December 15, 2017" date of the notice to renegotiate, even though the Agency had already failed to comply with the required timelines for a briefing. The Agency's insistence on the phone call also violated Article 47, which states, "The parties *may* first attempt to reach agreement by conducting telephone negotiations." (Emphasis added). There is no requirement to meet by telephone prior to a face-to-face meeting.

In continuing the Agency's early set pattern of unilaterally selecting which arrangements to follow in Article 47, in a letter dated February 5, 2018, Mr. Frassinelli insists that the Union be limited to four team members to bargain ground rules. Article 47, Section 2(G) states, "Each party may have up to four negotiator which by mutual agreement may be increased based on the complexity and/or number of issues to be negotiated." However, the Agency interprets this language to mean "unless we can come to an agreement on the team size for negotiating the ground rules, the parties will only be allowed up to four members per team." The Agency refuses to acknowledge the rest of the language which sets the standard by which the team size should be increased – based on complexity and/or number of issues.

There can be no dispute that term bargaining is more complex than any singular mid-term issue. It also cannot be disputed that the scope of bargaining as furnished in the Agency's proposed ground rules, leaves the entire contract open for renegotiation. As a result, the number of issues is numerous. With both standards of complexity and number of issues being met, the Agency is arbitrarily and capriciously withholding agreement in violation of Article 47 and the Duration of Agreement Section of the Master Agreement.

Additionally, the Agency improperly and unilaterally attempts to bifurcate the number of team members negotiating ground rules from the number negotiating for the rest of term bargaining. In insisting on, now, five team members, Mr. Frassinelli stated, in a February 12, 2018 letter, "that the team size for negotiating ground rules is not precedential on team size to negotiate the actual Master Agreement." There is no such delineation in the arrangements of Article 47. Although the parties could agree to such bifurcation, no such agreement has occurred. Any ground rules negotiation is one of the "number of issues" to be renegotiated for the term agreement as contemplated in Article 47. By the Agency's improper piece-mealing logic, the Agency could unilaterally limit the number of the Union's team members based on each article/issue taken up

during term negotiations. This is clearly an absurd result, which was not contemplated or intended by the parties in agreeing to the language of Article 47.

It is important to note that during prior term renegotiations, with similar contract language, the Union had eight team members bargain its ground rules and eleven team members thereafter. This arrangement was made by mutual agreement, based on the complexity and number of issues to be bargained, not the unilateral bifurcation and insistence of the Agency. Here, the Agency has proposed completely different ground rules from prior negotiations and has completely ignored the complexity and number of issues within AFGE's bargaining unit. The unit is diverse in position titles and numbers, with AFGE representing 253,000 bargaining unit employees compared to the 7,000 of NFFE, the 9,500 of NAGE, and the 12,000 of SEIU, each of which had at least seven team members during renegotiations.

Finally, by letter dated February 21, 2018, Mr. Frassinelli improperly engaged in regressive bargaining by stating, after offering a team size of five, "Since the parties have not reached mutual agreement on a team size greater than four . . . each party may have up to four members for bargaining ground rules." The Agency's conduct does not indicate any intention to reach an agreement.

By **engaging in piecemeal and regressive bargaining**, the Agency is also committing an unfair labor practice under 5 U.S.C. §§7116(a).

Violation

By insisting that the term renegotiation team only have **four** members, the VA violated, and continues to violate, the following:

- Duration of Agreement Section of the MCBA: requiring arrangements for renegotiation be in accordance with Article 47 Mid-term Bargaining;
- Article 47 of the MCBA: requiring the increase to the number of negotiators be based on the complexity and/or number of issues to be negotiated;
- 5 U.S.C. §§7116(a)(1) and (a)(5): requiring the Agency to consult and negotiate in good faith with the Union; and,
- 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 cease and desist further violations of the Agreement **and law**;
- To post a notice in all VA locations where bargaining unit employees are present that the VA will refrain from further violations of the Master Agreement **and law**;
- To make whole the Union, or any employee affected by the Agency's violation;
- To pay reasonable attorney's fees and litigation costs under 5 U.S.C. §552a(g); and,
- 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 regarding this National Grievance, please contact the undersigned at AFGE Office of the General Counsel.



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cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Mark Frassinelli, Chief Negotiator, VA