



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-04/21/17

Date: April 21, 2017

To: Kimberly McLeod
Acting 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: Michael A. Gillman, Staff Counsel, National Veterans Affairs Council (#53) (NVAC), American Federation of Government Employees, AFL-CIO (AFGE)

RE: National Grievance in the matter of the Department of Veterans Affairs for its failure to comply with its contractual and statutory obligations to notify and bargain with NVAC regarding the direct conversion of bargaining unit work in the Office of Community Care and for the otherwise unlawful contracting out of said bargaining unit work.

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) (the “MCBA” or “Master Agreement”), the 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 Department of Veterans Affairs (“Agency”) for violations regarding the Agency’s failure to comply with its contractual and statutory obligations to notify and bargain with NVAC regarding the direct conversion of bargaining unit work in the VHA Office of Community Care and for the otherwise unlawful contracting out of said bargaining unit work.

In taking these actions, the Agency violated federal law and regulations, as well as the Master Agreement. To date, the Agency has failed to remedy this violation, and as such, the Agency is in continuing violation of contractual obligations and statutory requirements.

Specifically, the Agency violated Articles 2, 11, 47, and 49 of the MCBA, 5 U.S.C. §7116(a)(1) and (5), 41 U.S.C. §1710, Consolidated Appropriations Act, 2008, P. L. 110-161, div.



D, title VII, §739, as amended by the FY2009 Omnibus Appropriations Acts, P.L. 111-8, §735; P. L. 110-161, div. I, title II, §228, 31 U.S.C. §501 note, Consolidated Appropriations Act, 2016, P.L. 114-113, §742, and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

STATEMENT OF THE CASE

The Agency has undertaken a conversion of bargaining unit work in the VHA Office of Community Care to contractors. The Agency's conversion of this work, without consulting with the Union and without providing notice and an opportunity to bargain to the Union, violates both the MCBA and federal law and regulations. Furthermore, the contracting out of federal bargaining unit work in these circumstances violates federal law where a moratorium on public-private cost comparisons (pursuant to OMB Circular A-76) has been in place and where such comparison is a prerequisite for contracting out of the federal work in question.

It has come to the attention of the Union that the Agency has undertaken to contract out work that would otherwise be performed by bargaining unit employees (specifically, but not necessarily limited to the work of Program Support Specialists, Program Support Assistants, and Voucher Examiners) in the VHA Office of Community Care. The duties of these bargaining unit employees—relating to inter alia the verification, distribution and authorized claims processing of claims for payment to non-VA facilities and providers—have been assigned to contractors. This contracting out has affected the work of Community Care bargaining unit employees working at the Aleda E. Lutz Veterans Affairs Medical Center in Saginaw, Michigan. Upon information and belief, this contracting out has occurred at other facilities affecting more than one local union.

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. Federal law and regulation prohibits government agency from converting work from federal employees to contractors without first conducting a formal cost comparison. *See e.g.* 41 U.S.C. §1710; Consolidated Appropriations Act, 2008, P. L. 110-161, div. D, title VII, §739; 31 U.S.C. §501 note; *see also* P. L. 110-161, div. I, title II, §228 (prohibiting the Agency from appropriating funds in a manner inconsistent with section 842 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006 (Public Law 109-115; 119 Stat. 506) or 38 U.S.C. §8110(a)(5). Such cost comparisons are governed by OMB Circular A-76. However, there is currently in effect a moratorium on all such public-private cost comparisons pursuant to the Consolidated Appropriations Act, 2016 (P.L. 114-113, §742). Thus, no contracting out of the Agency work at issue is permitted under these circumstances. By contracting out work performed by federal employees in the VHA Office of Community Care, the Agency violated federal statutes and regulations, thereby violating Article 2 of the MCBA.

Article 11 of the MCBA includes a series of obligations concerning the contracting out of bargaining unit work. Under Section 1, the Agency was required to provide periodic briefings to Union officials at the local and national levels concerning formal cost comparison processes, which it failed to do. Under Section 3, the Agency was required to notify the Union and provide an opportunity to negotiate when it determines that bargaining unit work will be contracted out, which it also failed to do.

Article 47 of the MCBA, entitled Mid-Term Bargaining, and Article 49, Rights and Responsibilities, both require that the Agency provide written notice and an opportunity to bargain to the Union when proposed changes in the conditions of employment affect two or more local unions. Despite its decision to contract out work at the VHA Office of Community Care, a decision which will impact bargaining unit employees in multiple locals, the Agency failed to notify the NVAC President in accordance with the MCBA. Likewise, by refusing to consult and negotiate in good faith with the Union regarding the conversion of bargaining unit work, the Agency also violated 5 U.S.C. §7116(a)(5).

Violation

By failing to fulfill its contractual obligations and follow statutory requirements, the Agency violated, and continues to violate, the following:

- Articles 2 of the MCBA, requiring the Agency to comply with federal law and regulations cited above in the contracting out of bargaining unit work;
- Article 11 of the MCBA, requiring the Agency to notify the Union and provide an opportunity to bargain when the Agency contracts out bargaining unit work;
- Articles 47 and 49 of the MCBA, requiring the Agency to notify the Union and provide an opportunity to bargain concerning proposed changes in working conditions of bargaining unit employees;
- 5 U.S.C. §7116(a)(5), requiring the Agency to consult and negotiate in good faith with the Union over changes in working conditions of bargaining unit employees;
- 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 Agency agree to the following:

- Cease and desist from illegally contracting out bargaining unit work, in particular in the VHA Office of Community Care;
- To return to the status quo ante until the Agency has properly notified the NVAC and provided the NVAC an opportunity to bargain concerning the proposed changes in working conditions;
- Cease and desist from any planned reductions in force or adverse performance appraisals premised upon declining output of bargaining unit employees affected by contracted work;
- To fully comply with its contractual obligations under the MCBA;
- To fully comply with all applicable federal laws, rules, and regulations; 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 feel free to contact the undersigned at AFGE Office of the General Counsel.



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