



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

NATIONAL VETERANS AFFAIRS COUNCIL

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

7S/388601

NATIONAL GRIEVANCE NG-6/13/19

Date: June 13, 2019

To: Tracy Schulberg
Acting Executive Director
Department of Veterans Affairs
Office of Labor-Management Relations
810 Vermont Avenue, NW
Washington, DC 20420
tracy.schulberg@va.gov
sent via electronic mail only

From: Shalonda Miller, 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 failure to notify
and bargain over the implementation of a “mystery shopper” quality improvement
program

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 (“NVAC” or 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 (the “Department”) for failing to provide notice and an opportunity to bargain over the implementation of a secret shopper quality improvement program. 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, 3, 7, and 47 of the MCBA, 5 U.S.C. § 7116(a), and any and all other relevant articles, laws, regulations, and past practices not herein specified.

STATEMENT OF THE CASE

Background

On April 18, 2019, Dr. Susan Kirsh, the Acting Deputy Under Secretary of Health for Access to Care, sent a statement to VISN 6 management officials about an 18-week mystery



shopper initiative, scheduled to begin the same day. The “mystery shoppers” would be assessing medical services via telephone and in-person inquiries for the purported purpose of “*gaining a deeper understanding of the Veterans perspective of obtaining access to VA medical services*” and “*provid[ing] a more comprehensive understanding of what is working well and identify[ing] both system-wide and regional recommendations for improving VA’s processes for providing Veterans access.*”

The Department did not provide notice to the Union. However, the same day the notice was sent to the management officials, NVAC issued a demand to bargain. (See attached.) To date, the Department has not contacted the Union with regard to bargaining.

Violations

Article 47 of the MCBA governs the parties’ mid-term bargaining obligations at the local, intermediate, and national level. VISN-level changes are considered intermediate level; therefore, advance notice of the change and an opportunity to bargain must be given to the NVAC President, or her designee. Also, in accordance with Article 47, the Department was required to provide a briefing within twenty (20) workdays of the Union’s demand to bargain. Accordingly, the Department was contractually obligated to respond no later than May 17, 2019. Here, the Department did not provide advance notice of the initiative, nor did it respond to the Union’s demand. Thus, by refusing to engage in mid-term bargaining, the Department violated the parties’ agreement. Further, it is an unfair labor practice, in violation of Sections 7116(a)(1) and (5) of the Federal Service Labor Management Relations Statute (the “Statute”), when an agency fails to bargain in good faith.

Additionally, Article 2 of the MCBA requires that the Department comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Therefore, in violating section 7116 of the Statute, as set forth above, the Department 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. By ignoring its mid-term bargaining obligations, the Department renounced its commitments and necessitated further collective bargaining disputes.

Finally, Article 7 of the MCBA fully articulates agreed-upon procedures for implementing quality improvement programs such as this mystery shopper initiative. The Article encourages the sharing of information between labor and management with regard to programs aimed at reviewing and improving Department programs and processes. Moreover, the Article requires that the Department recognize the Union as the exclusive bargaining unit representative in “**implementing, maintaining, and improving** these quality programs.” And provides that “[p]articipation of bargaining unit employees in the Department’s quality programs is a matter left to the discretion of the Union....” (emphasis added). Here, the April 18th announcement stripped NVAC of any discretion over the participation of its bargaining unit employees. Instead, the notice to management indicated that the Department intends to implement the mystery shopper program Department-wide, once again in blatant disregard of its contractual obligations.

In sum, by failing to fulfill its statutory and contractual 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 3 of the MCBA: requiring the Department to maintain an effective, cooperative labor-management relationship with the Union;
- Article 7 of the MCBA: requiring the Department to collaborate with the Union when establishing quality improvement programs and follow procedures established by the National Quality Council;
- Articles 47 of the MCBA: requiring the Department to comply with agreed-upon procedures for mid-term bargaining, including advance notification of changes in conditions of employment;
- 5 U.S.C. §§ 7116(a)(1) and (a)(5): requiring the Department 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.

Remedies Requested

The Union asks that, to remedy the above situation, the Department agree to the following:

- To cease and desist the further implementation of the mystery shopper program;
- To return to the *status quo ante* until bargaining obligations are met;
- To fully comply with its contractual obligations under Articles 2, 3, 7, and 47 of the MCBA and its statutory obligations under 5 U.S.C. § 7116(a);
- To distribute an electronic notice posting to all bargaining unit employees concerning the Department's failure to properly notify and bargain with the Union over the implementation of the mystery shopper initiative;
- To make whole any employee adversely affected by the unilateral implementation of the initiative; 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, please contact the undersigned at AFGE's 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.

Submitted by,


Shalonda Miller
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AFGE, AFL-CIO
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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



**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
NATIONAL VETERANS AFFAIRS COUNCIL #53
Affiliated with the AFL - CIO
Mid-Term Bargaining Committee**

Oscar L. Williams Jr., Chair
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Harold Robbins, Member
V President, AFGE Local 559
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Orlando, FL 32803

April 18, 2019

Tracy Schulberg, Acting Executive Director
Office of Labor Management Relations (LMR)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Subject: VHA Mystery Shopper Access and Customer Service Assessment

Dear Ms. Schulberg:

In accordance with Article 47, Section 2, of the Master Agreement, National VA Council #53 is formally demanding to bargain on VHA Mystery Shopper Access and Customer Service Assessment as cited above within the Department. Please provide the NVAC's Mid-Term Bargaining Committee named above with all information and/or data related to this subject. The negotiations of this matter should normally begin no later than twenty (20) workdays after the Management Chief Negotiator in this matter receives our demand to bargain.

Please cease and desist any implementation until the bargaining obligation has been met. The NVAC's Mid-Term Bargaining Committee may request a briefing over the cited subject above, before sending any proposals. If you have any questions, please call me at (217) 554-4866.

Sincerely,

Oscar L. Williams, Jr.
Chairperson, Mid-Term Bargaining Committee
2nd Executive Vice President
National VA Council #53

cc: Alma L. Lee, President National VA Council #53
NVAC Executive Committee

AFGE: Good Government We Are Ready