



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-8/01/17

Date: August 1, 2017

To: Kimberly McLeod
Acting Executive Director, Labor-Management Relations
Department of Veterans Affairs
810 Vermont Ave., NW
Washington, D.C. 20420
Kimberly.mcleod@va.gov
Sent via electronic mail

From: Michael Gillman, Staff Counsel, National Veterans Affairs Council (#53) (NVAC),
American Federation of Government Employees, AFL-CIO (AFGE)

RE: National Grievance in the matter of Department of Veterans Affairs for its failure to bargain over the impact and implementation of the VA Accountability and Whistleblower Protection Act of 2017

STATEMENT OF CHARGE

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 Agency for failure to bargain with the Union over the unilateral implementation of the VA Accountability and Whistleblower Protection Act of 2017 (the “Act”) without bargaining the impact and implementation thereof with the Union.

By implementing the Act prior to bargaining with the Union, the Agency violated Articles 2 and 47 of the MCBA and 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

On June 23, 2017, the President signed the Act into law. Among other things, the Act dramatically amended the rights of bargaining unit employees to challenge disciplinary and



performance based actions, thereby significantly affecting the working conditions of bargaining unit employees. The Union, by letter dated July 3, 2017, demanded to bargain with the Agency over the impact and implementation of the Act's provisions. In recognition of the Agency's statutory and contractual obligation to bargain with the Union over the impact and implementation *prior to* implementation, the demand to bargain also demanded that the Agency cease and desist any implementation of the Act until the bargaining obligation has been met.

To date the Agency has not provided the Union with any information or data related to the proposed changes, has not provided the Union with a briefing on the proposed changes, and has not commenced bargaining with the Union over the impact and implementation of the changes. Despite this fact, the Agency has unilaterally developed several Human Resources Management Letters (HRMLs) which dictate to local management how the Act is to be implemented. *See* HRMLs No. 05-17-08; No. 05-17-06. Local management has in turn begun proposing and imposing discipline under the procedures and provisions of the Act even though the impact and implementation of the changes required by the Act have not yet been bargained at the national level.

Article 47 of the MCBA sets forth the contractual obligations of the parties for mid-term bargaining at the national level. Specifically, Section 1(C) permits the Union to "initiate mid-term bargaining at all levels on matters affecting the working conditions of bargaining unit employees." Section 2(B) requires the Agency to brief the Union, if requested, within twenty (20) workdays after receiving the Union's demand to bargain. Further, 5 U.S.C. §7116(a)(5) requires the Agency to "consult or negotiate in good faith with a labor organization." The Agency violated the Master Agreement and federal law by ignoring the Union's demand to bargain, by failing to brief and bargain with the Union, and by unilaterally developing and distributing HRMLs governing the implementation of the Act's provisions affecting the working conditions of bargaining unit employees.

Violation

By failing to fulfill its obligations, the Agency violated, and continues to violate, the following:

- Article 47, Sections 1 and 2 of the MCBA: requiring the Agency to participate in the negotiation process when the Union issues a bargaining demand;
- Article 2, Section 1 of the MCBA: requiring the Agency to comply with all applicable federal statutes;
- Section 7116(a)(5) of the Federal Service Labor-Management Relations Statute: requiring the Agency to negotiate in good faith; 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 referenced violations, the Agency agree to the following:

- To cease and desist from any implementation of the Act as applied to bargaining unit employees until such time as the Agency's bargaining obligations have been exhausted;
- To return to the *status quo ante* until the Agency has met its contractual and statutory obligations to the Union;
- To reinstate and make whole any bargaining unit employee disciplined under the procedures and provisions of the Act until such time as the Agency's bargaining obligations have been exhausted;
- To rescind extant HRMLs relating to the implementation of the Act as applied to bargaining unit employees until such time as the Agency's bargaining obligations have been exhausted;
- To fully comply with its contractual and statutory obligations under Articles 2 and 47 of the MCBA and 5 U.S.C. 7116(a)(5)
- To post, and distribute to affected employees via electronic mail, an appropriate notice signed by the appropriate Agency official acknowledging the failure to bargain and affirming its obligations under the Statute; 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 contact the undersigned at (202) 639-6424.

Submitted by,



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cc: Alma L. Lee, President, AFGE/NVAC
Mary-Jean Burke, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, NVAC Supervisory Attorney, AFGE