

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-8/12/19

Date: August 12, 2019

To: Tracy Schulberg
Executive Director
Office of Labor-Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 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 regarding its violation of a national MOU concerning tours of duty for Member Services employees

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) (“Master Agreement”), 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 of Veterans Affairs for its failure to adhere to the terms and provisions as set forth in a February 14, 2019 Memorandum of Understanding (“MOU”) between the Union and the Department concerning Member Services employees’ tours of duty.

Specifically, the Department’s actions have violated the Member Services MOU; Articles 2, 13 and 47 of the Master Agreement; and constitute an unfair labor practice pursuant to 5 U.S.C. § 7116 (a)(1) and (5).



STATEMENT OF THE CASE

Background

Beginning on July 23, 2019, at least eight (8) bargaining unit employees (“BUE”) in the Member Services Department made written requests to management to change their tours of duty pursuant to the MOU (attached as Exhibit “A”) and Article 13 of the MCBA. The MOU specifically provides the procedures by which tours of duty are established, distributed and modified within the service line. That same day, Lashonda Lawrence, a Supervisory Contact Representative in Member Services, informed one of the employees that a “tour adjustment request form” would need to be completed in order to process the request. According to Ms. Lawrence, the use of the form is in accordance with The Tour Adjustment-HRC Standard Operating Procedure - CMSOP 0413 (“SOP”) (attached as Exhibit “B”). The SOP, dated October 6, 2013, provides a tour adjustment process which requires the written form be completed and submitted to the employee’s supervisor to facilitate the request.

Violations

The Department’s reliance on this SOP contravenes the language of the MOU which provides, “[a]ny current bargaining unit employee can voluntarily submit a request to change their current tour of duty in accordance with Article 13, Section 3 and Section 4, of the Master Agreement.” MOU, ¶ 8. The referenced sections of the MCBA only require that any such request be made in writing.

Here, the local union attempted to explain to Ms. Lawrence that the national MOU and the MCBA supersedes the SOP. Notwithstanding the language cited above, according to Ms. Lawrence, “tour bids” and “tour adjustments” are two different processes. She therefore concluded that the employees’ requests were not covered by the MOU.

However, the plain language of the MOU demonstrates that “tour adjustments” were specifically contemplated during negotiations by the national parties. First, the MOU allows BUE to establish their tours of duty while being mindful of management’s valid operational needs. Second, it allows those tours to be *adjusted* by management so long as the Department satisfies its bargaining obligations with the Union. And finally, it states that employees can voluntarily submit a request to change (*viz.*, “adjust”) their current tour of duty by following the procedures outlined in Article 13 of the MCBA, such as the request be made in writing. The MCBA contemplates a quick resolution to the employee’s request so long as specific requirements are met (*see* MCBA, Article 13, section 4B). By contrast, the SOP required employees to “[c]ommunicate issues requiring the need for a tour adjustment,” and [p]rovide necessary documentation as appropriate to support the request.” The MOU conveys the national parties’ commitment to developing a streamlined and modern process that avoids these types of administrative delays and additional requirements.

Resultingly, by insisting on the use of the outdated “tour adjustment request form,” the Department has violated:

1. Article 2, Section 2 of the MCBA which provides that the Master Agreement, and any supplemental agreements, govern over any conflicting Department regulations;
2. Article 13 of the MCBA which prescribes the procedures for shift changes, reassignments and relocations;
3. the Member Services MOU which establishes that tour bids are negotiated at the national level, and specifically provides that the MOU supersedes any existing MOUs regarding tour bid processes and procedures within the Member Services Department. MOU ¶ 5.
4. Article 47 which provides the process for notifying the Union and bargaining over changes in conditions of employment during the life of the MCBA. The Article specifically provides that local bargaining may take place so long as it does not conflict with negotiated national policy and agreements. Further, a change in personnel policies, practices, and working conditions—such as Ms. Lawrence requiring the use of a form to modify a tour of duty—requires notice to the Local Union and an opportunity to bargain prior to the change being implemented. Here, by unilaterally implementing this change to tour bid procedures, the Department violated Article 47 of the MCBA; and,
5. 5 U.S.C. § 7116(a)(1) and (5) which requires that the Department meet its statutory bargaining obligations prior to implementing changes to conditions of employment.

Remedy

In light of the violations described above, the Union asks that the Department agrees to the following:

- To fully comply with the terms of the Member Services MOU;
- To fully comply with its contractual obligations under Articles 2, 13 and 47 of the MCBA and its statutory obligations under 5 U.S.C. § 7116;
- To rescind the orders given by Ms. Lawrence or any other management official concerning the process to change a tour; and
- To agree to any and all other remedies appropriate in this matter.

Timeframe 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 grievance, 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,



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Staff Counsel, National VA Council
Office of the General Counsel
American Federation of Government Employees, 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


Exhibit A

Memorandum of Understanding

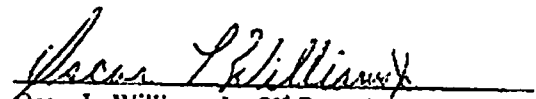
The following is an agreement between the Department of Veterans Affairs, Veterans Health Administration and the American Federation of Government Employees (AFL-CIO), National Veterans Affairs Council #53 concerning VHA Member Services Call Center Business Lines Tour of Duty.

1. The national parties agree this MOU applies to tours of duty for Contact Representatives, Lead Contact Representatives, and Pharmacy Technicians within the Health Resource Center (HRC) and Health Eligibility Center (HEC) excluding the following business lines in the HRC, Clinical Pharmacy Resources and National Call Center for Homeless Veterans.
2. The national parties agree that the determination of a Tour of Duty is a permissive management right. Therefore, the appropriate VHA Member Services management officials shall proscribe the necessary tours of duty for all Bargaining Unit Employees covered by AFGE in accordance with the VA/AFGE Master Agreement Dated March 15, 2011.
3. Tours of duty shall be done in accordance with the following Articles:
 - Article 13 – Reassignment Shift Changes and Relocation, Section 4, Section 5 and Section 6;
 - Article 21 – Hours of Work and Overtime Section 2 C and E and Section 3 - Tour of Duty/Scheduling; and
 - Article 23 – Merit Promotion Section 8. F. and H.
4. A onetime tour of duties process will occur at the aforementioned business lines located at each campus (Topeka, KS, Fort. Riley, KS, Atlanta, GA, Canandaigua, NY, Hot Springs, SD, & Waco, TX) to include virtual and telework employees. This process will allow for bargaining unit employees to establish their tour of duty, as proposed by management officials of the current Member Service Business Lines. Tours of duties for any business lines can be adjusted, by providing notice to the Union at the appropriate level, in accordance with the Article 47- Mid-Term Bargaining and the Articles as listed above in the VA/AFGE Master Agreement. Tours may be determined based on valid operational needs at specific locations.
5. The subject of tour bids is a proper subject for national term negotiations. All prior MOUs regarding all tour bid processes and procedures for AFGE bargaining unit employees within Member Services are hereby rescinded and superseded upon the signing and effective date of this MOU.
6. Seniority is defined by the local Parties and may be memorialized in an existing local supplemental agreement or MOU. If there is no local supplemental agreement or MOU currently in place, the local Parties shall negotiate over how seniority is determined in accordance with the Master Agreement.
7. Employees that operate bilingual calls will be placed on tours of duties to support bilingual hours of operation.
8. Any current bargaining unit employee can voluntarily submit a request to change their current tour of duty in accordance with Article 13, Section 3 and Section 4, of the Master Agreement.
9. If operational needs require a change in tours of duty for specific locations the business line will offer, available tours to current BUEs in the associated business line. Interested employees will provide notice of their interest in accordance with Article 13, Section 4 and selection will be based on seniority. Tours may be determined based on valid operational needs at specific locations.


10. Bargaining unit employees may voluntarily request to work a compressed work schedule in accordance with Article 21 Section 2. C., of the Master Agreement.
11. In accordance with Article 21, Hours of Work and Overtime, the department will make every practicable effort to ensure bargaining unit employees have two consecutive days off.
12. An established tour of duty, outlined in Article 21 Hours of Work and Overtime, Section 3 of the Master Agreement, shall be offered to new employees, within the bargaining unit.
13. AFGE Locals may bargain on other related matters not covered by this MOU, so long as there is no conflict with this MOU or the VA/AFGE Master Agreement.
14. Upon the receipt the appropriate management official shall provide a copy to the following AFGE Local Presidents: Local 518, Local 906, Local 1822, Local 1539 and Local 3306.


Ainbint Munn, Labor Relations Specialist
For the Department of Veterans Affairs (VA)

2/14/2019
Date


Oscar L. Williams Jr., 2nd Exec. Vice President
AFGE National Veterans Affairs Council #53

02/14/2019
Date


James Zeyeski, VHA WMC Labor Consultant
For Veterans Health Administration (VHA)

2/14/2019
Date

Exhibit B

Tour Adjustment-HRC Standard Operating Procedure

Number	CMSOP 0413
Effective Date	October 6, 2013
Audience	Contact Management & Pharmacy Customer Care
Purpose	To define expectations and processes for the Contact Management (CM) and Pharmacy Customer Care (PCC) Tour Adjustment Program.
Authority	This standard operating procedure is designed to provide guidance concerning the Tour Adjustment Program. Management has the authority to approve or disapprove a request to change an employee's assigned tour of duty on a case by case basis.

Responsibility	POSITION	RESPONSIBILITIES
	Associate Director, CM & PCC	<ul style="list-style-type: none"> Broad oversight of the Tour Adjustment Program Final authority for approved or disapproved requests
	Deputy Associate Director and Supervisory Program Specialist, CM & PCC	<ul style="list-style-type: none"> Direct oversight of Tour Adjustment Program Provide support, guidance, and instruction to Supervisory staff
	Supervisors	<ul style="list-style-type: none"> Provide guidance and instruction to CRs when a tour adjustment is requested Gain understanding of the employee's unique situation Determine if recommendation for approval is appropriate
	Contact Representative	<ul style="list-style-type: none"> Communicate issues requiring the need for a tour adjustment Provide necessary documentation as appropriate to support the request

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Tour Adjustment-HRC Standard Operating Procedure, Continued

Consideration Criteria

- CRs should make every effort to resolve their scheduling conflicts before formally requesting a schedule change; this must include utilizing the Employee Tour Exchange Program or making arrangements outside of work to accommodate the current schedule already assigned.
- As determined by the CRs Supervisor, requests for tour adjustments may be reviewed for approval by Management on a case by case basis. Business needs and the employee's unique situation will be taken into consideration for each tour adjustment request.
- HRC Management reserves the right to request supporting documentation as it pertains to each request such as a class schedules.
- Time frame limitations for approved requests may be enforced; this will be communicated to the CR requesting the schedule change prior to approving the proposed new tour of duty.

Tour Adjustment Process

When an employee needs to request a tour adjustment, the following steps will be completed.

Step	Action
1	Employee will meet with their immediate Supervisor to discuss the need for a tour adjustment.
2	The Supervisor will review the employee's request. <u>If the Supervisor recommends approval:</u> they will forward to WFM for a business need review. <u>If the Supervisor recommends disapproval:</u> they will mark request form "disapproved."

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Tour Adjustment-HRC Standard Operating Procedure, Continued

Tour Adjustment Process (continued)

Step	Action
3	<p>WFM will make their recommendation and the Supervisor will respond accordingly.</p> <p><u>If WFM Recommends approval</u> – The Supervisor will route through chain of command for Associate Director approval and arrange schedule adjustment.</p> <p><u>If WFM Recommends disapproval</u> – The Supervisor will route through chain of command for possible reconsideration.</p>
4	<p>For override approval Management will convene with the immediate Supervisor and thoroughly review the proposed approval recommendation to consider:</p> <ul style="list-style-type: none"> • Business needs evaluation • Employee documentation requirements defined based on the employee circumstances, and • Time frame limitation established, as appropriate.
5	Proposed approval status and stipulated requirements will be communicated to the CR.
6	CR will provide the completed <u>Tour Adjustment Request Form</u> and provide documentation requirements to their immediate Supervisor.
7	Manager will sign off on the request and submit it to the Deputy Associate Director and Associate Director for signature and final approval.

Communication

An approved copy of all Tour Adjustment Request applications must be given to the

- CR requesting the tour adjustment
- CR's Supervisor & Manager
- Timekeeping, and
- The HRC WFM Group.

Failure to provide a fully approved Tour Adjustment Request application to WFM at least 5 working days prior to the start of the next pay period will delay the tour adjustment until the following pay period.

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Tour Adjustment-HRC Standard Operating Procedure, Continued

Communication
(continued) CRs initiating a tour adjustment are expected to communicate and work with their immediate Supervisor to ensure all requirements are met in a timely manner.

Management will assist employees with questions and provide guidance.

- Important**
- Tour adjustments are temporary and do not exclude CRs from participating in tour bids conducted throughout the year.
 - The time frame expiration date stipulated during the initial approval process will be implemented automatically unless an unforeseen circumstance requires further reconsideration for an extension. The CR is responsible for addressing this issue with their immediate Supervisor.
 - Tour Adjustments will be considered for extenuating circumstances only (the need for the use of VAN POOL does not guarantee approval of a tour adjustment).
 - CRs who require a Tour Adjustment due to a medical condition must request a Reasonable Accommodation by contacting Tracey Sugihara, HRC EEO Program Manager. Additional information regarding this topic can be found in the HRC Policy, Reasonable Accommodation for Employees and Applicants with Disabilities.
-

Contact Questions, comments, and/or recommendations regarding this business procedure should be forwarded to your immediate supervisor.

References CM SOP 030211 – Tour Exchange
Tour Adjustment Request Form
HRC-32 Reasonable Accommodation for Employees and Applicants with Disabilities

Approved By

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Tour Adjustment-HRC Standard Operating Procedure, Continued

Approved By **Matthew Eitutis**
(continued) **Associate Director, Contact Management**
 Health Resource Center

Steven Oliva
Associate Director, Pharmacy Customer Care
Health Resource Center

Approval Date **September 6, 2013**

Review Date **One (1) year from effective date**

Rescissions **None**

HRC Tour Adjustment Request

Date Form submitted: _____ Agent Name: _____

Primary Skill: _____ Secondary Skill: _____

Temporary Adjustment – From Date: _____ To Date: _____

Permanent (will not participate in tour bids)

Current Tour (example M-F 8:00-4:30) _____

Requested Tour _____

Reason for request (be very specific):

Agent Signature: _____ Date: _____

Supervisor Signature: _____ Date: _____

Supervisor Approve: Yes No

Basis for supervisor recommendation: _____

WFM Signature: _____ Date: _____

WFA Recommendation: Yes No

WFM Basis for recommendation: _____

Payroll Signature: _____ Date: _____

Manager Signature: _____ Date: _____

Concur with WFM Override

Deputy CM/PCC Signature: _____ Date: _____

Concur with WFM Override

Associate Director CM/PCC Signature: _____ Date: _____

Concur with WFM Override

Notes: _____