



**UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
CHARGE AGAINST AN AGENCY**

FOR FLRA USE ONLY

Case No.

Date Filed

1. AGENCY AGAINST WHICH CHARGE IS BROUGHT

a. Name of Charged Agency (include address, city, state, & ZIP)
Department of Veterans Affairs
810 Vermont Ave NW
Washington, D.C. 20420

b. Agency Representative (include name, title, address)
Kimberly McLeod
Acting Executive Director, VA Office of LMR
810 Vermont Ave. NW
Washington, D.C. 20420

tel. _____ fax _____
e-mail kimberly.mcleod@va.gov

2. CHARGING PARTY

a. Name of Charging Party (include address, city, state, & ZIP)
National Veterans Affairs Council (NVAC)
American Federation of Government Employees, AFL-CIO
80 F St. NW
Washington, D.C. 20001

b. Charging Party Representative (include name, title, address)
Michael Gillman
Staff Counsel, NVAC
American Federation of Government Employees, AFL-CIO
80 F St. NW
Washington, D.C. 20001

tel. 202-639-6424 fax 202-379-2928
e-mail michael.gillman@afge.org

3. BASIS OF THE CHARGE

a. Set forth a clear and concise statement of the facts constituting the alleged unfair labor practice, including date and location of the particular acts.
On December 1, 2016 the VHA mid-term bargaining committee of the National Veterans Affairs Council, AFGE (the "Union") issued a demand to bargain in response to the Department of Veterans Affairs, Veterans Health Administration's (the "Agency") proposed policy of required bargaining unit employees ("health care personnel") to get an influenza vaccine or else wear a surgical mask at all times in the vicinity of patient care areas.
Subsequently the parties exchanged proposals but to date have failed to reach agreement or a bona fide impasse. The Agency has claimed that some (not all) of the Union's proposals are not negotiable. The Union has filed a negotiability appeal with the Authority and the processing of the petition is still pending. Despite this fact on or about September 26, 2017, the Agency, through its Acting Under Secretary for Health Poonam Alaigh unilaterally implemented the policy that would, on the pain of discipline, require health care personnel to get a flu shot or wear a surgical mask at work. By implementing this policy before reaching impasse, agreement with the Union, or resolution of the negotiability issues, the Agency has violated federal statutes 5 U.S.C. 7116(a)(1) and (5).
Given the highly intrusive policy of requiring employees to undergo a medical procedure, reveal to the public that they have not undergone such a procedure by wearing a mask, or potentially lose their job, the Union asks that the FLRA intervene immediately and enjoin the further implementation of this requirement. The Union asks further that the FLRA order that the Agency rescind the policy in question and return to the status quo ante until such time as an agreement has been reached or the Agency has completed its bargaining obligations.

b. Which subsection(s) of 5 U.S.C. 7116(a) do you believe the Agency has violated? (1) (2) (3) (4) (5) (6) (7) (8)

c. Have you or anyone else raised this matter in any other procedure? No Yes If yes, where?
 Grievance Procedure Federal Mediation and Conciliation Service Federal Service Impasses Panel
 Equal Employment Opportunity Commission Merit Systems Protection Board Office of Special Counsel
 Other Administrative or Judicial Proceeding Negotiability Appeal to FLRA Other _____

4. DECLARATION

I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001.

THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX 1b BY [check all appropriate boxes]

In Person 1st Class Mail Fax Commercial Delivery Certified Mail e-mail (see reverse)

Michael Gillman

September 28, 2017

Type or Print Your Name

Your Signature

Date

INSTRUCTIONS FOR COMPLETING FORM 22:

General

Use this form if you are charging that a federal agency committed an unfair labor practice under paragraph (a) of section 7116 of the Federal Service Labor-Management Relations Statute. File an original form with the appropriate Regional Director, Federal Labor Relations Authority. If you do not know that address, go to the FLRA's website at www.flra.gov or contact the Office of the General Counsel, Federal Labor Relations Authority, (202) 218-7910. If filing the charge by fax, you need only file a fax-transmitted copy of the charge (with required signature) with the Region. You assume responsibility for receipt of a charge. A charge is a self-contained document without a need to refer to supporting evidence and documents that are also submitted to the Regional Director along with the charge. If filing a charge by fax, do **not** submit supporting evidence and documents by fax. See 5 C.F.R. Part 2423 for an explanation of unfair labor practice proceedings and, in particular, §§ 2423.4 and 2423.6, which concern the contents, filing, and service of the charge and supporting evidence and documents.

Instructions for filling out each numbered box

- #1a.** Give the full name of the agency, and component if applicable, you are charging and the mailing address, including the street number, city, state, zip code. If you are charging more than one agency or component with the same act, file a separate charge for each agency or component.
- #1b.** Give the full name, title, and other contact information for the agency's representative. Be as specific and as accurate as possible.
- #2a.** Give the full name of the union or individual filing the charge and the mailing address, including the street number, city, state, zip code. If the union is affiliated with a national organization, give both the national affiliation and local designation.
- #2b.** Give the full name, title, and other contact information for you or your representative. Providing all available contact information, especially e-mail addresses, will assist the investigation of your charge.
- #3a.** It is important that the basis for the charge be *brief* and *factual*, rather than opinion. Describe what happened that constitutes an unfair labor practice, who did it, where it occurred and when.
- Give dates and times of significant events as accurately as possible.
 - Give specific locations when important, e.g., "The meeting was held in the auditorium of Building 36."
 - Identify who was involved by title, e.g., "Chief Steward Pat Jones" or "Lou Smith, the File Room Supervisor."
 - Tell what happened, in chronological order.
- #3b.** Identify which one or more of the following subsections of 5 U.S.C. 7116(a) has or have allegedly been violated. Subsection (1) has already been selected for you because a violation of (2) through (8) is an automatic violation of (1). List all sections allegedly violated:
- 7116(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency-
- (1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;
 - (2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;
 - (3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;
 - (4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;
 - (5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;
 - (6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;
 - (7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or
 - (8) to otherwise fail or refuse to comply with any provision of this chapter.
- #3c.** If you or anyone else that you know of has raised this same matter in another forum, check the appropriate box or boxes.
- #4.** Type or print your name. Then sign and date the charge attesting to the truth of the charge and that you have served the charged party (individual named in box #1b). Check the box or boxes for all the methods by which you served the charge. You may serve the charge by e-mail only if the Charged Party has agreed to be served by e-mail.