



Out of Many/**One Union**
AFGE NVAC/AFI-CIO

NATIONAL VETERANS AFFAIRS COUNCIL

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

NATIONAL GRIEVANCE

NG-11/06/2020

7H/00395555

Date: November 6, 2020

To: Michael Picerno
Acting Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
michael.picerno@va.gov
Sent via electronic mail only

From: Sarah Hasan, 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 investigate and report to OSHA COVID-19 employee deaths and hospitalizations**

STATEMENT OF THE 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”), 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 (“Department”) for failure to investigate and report to Occupational Safety and Health Administration (“OSHA”) those employees who have either died from or been hospitalized due to COVID-19. The Department has also unilaterally changed its policy with respect to VHA Directive 7701 by refusing to initiate a Board of Inquiry (“BOI”) to investigate workplace fatalities and hospitalizations unless requested by a facility. To date, the Department has failed to remedy these violations, and as such, continues to violate the Master Agreement and federal law.

Specifically, the Department violated Articles 2, 3, 17, 29, 30, 41, 47 and 49 of the MCBA; 29 C.F.R. § 1904; 20 C.F.R. Part 10; 5 U.S.C. § 7116(a); VHA Directive 7701; and any and all other relevant articles, laws regulations, and past practices not herein specified. The Union specifically reserves the right to supplement this grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.



STATEMENT OF THE CASE

Background

Pursuant to VHA Directive 7701, Comprehensive Occupational Safety and Health Program, VISN 10 Network Director initiated a Board of Inquiry (“BOI”) to investigate work-related fatalities and hospitalizations resulting from the COVID-19 pandemic. This BOI analyzed data from March 1, 2020 to April 21, 2020 across VISN 10, which it published in a report (“Report”) on or about May 27, 2020. (*See* Attachment A, with 4 Exhibits).

According to this Report, the BOI found that 5 employee deaths and 14 hospitalizations were reported within VISN 10’s Incident Command Team for this time period, but that the Employee’s Compensation Operations and Management Portal (“ECOMP”) captured approximately 287 positive employee cases of COVID-19. The Report also found that VISN 10 facilities did not have a defined policy or communication process for reporting COVID-19 positive employees to the Safety Office for reporting and record-keeping purposes. The Report failed to include an analysis of whether facilities in VISN-10 were compliant with OSHA and Office of Worker’s Compensation Programs (“OWCP”) regulations and standards concerning the reporting of employee deaths and hospitalizations or the timely investigations of the same.

In spite of the BOI recognizing a breakdown in reporting and recording positive employee COVID-19 cases, it concluded that BOIs will not be convened for COVID-19 unless requested. This is both contrary to the plain language in VHA Directive 7701 requiring a BOI to be convened for each hospitalization and fatality, as well as contrary to the OWCP and OSHA regulations that require timely reporting and recording of the same to each respective agency.

While the Report is limited to the BOI initiated in VISN 10, similar violations have been reported at VA facilities around the country. As of the date of this National Grievance, approximately 64 employee fatalities due to COVID-19 have been reported across the Department. The majority of these were not reported to OSHA within 8 hours, as required by OSHA regulations. The majority of these were not immediately reported to OWCP nor was a CA-6 form submitted within 10 days as required by OWCP regulations. As COVID-19 employee deaths and hospitalizations continue to grow, the Department continues to fail to adhere to these reporting requirements on an ongoing basis.

Furthermore, the unilateral modification to VHA Directive 7701 concerning automatic BOI investigations constituted a change affecting employees’ conditions of employment that requires advance notification to the Union and an opportunity to bargain. The Department failed to provide the Union notice and an opportunity to bargain over these changes prior to implementation.

Violations

By failing to fulfill its 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 17 of the MCBA: requiring the Department to afford employees a healthy and safe environment;
- Article 29 of the MCBA: requiring the Department to maintain an effective and comprehensive Occupational Health and Safety Program consistent with OSHA regulations, to conduct a comprehensive analysis of injuries and illnesses at its facilities, and to timely report occupational illnesses or injuries;
- Article 30 of the MCBA: requiring the Department to maintain a healthful working environment and provide employees with preventative health measures;
- Article 41 of the MCBA: requiring the Department to adhere to OWCP regulations to ensure employees are apprised of their rights, provided the proper forms, and to otherwise cooperate with the employee in reporting workplace injuries and deaths;
- Article 47 of the MCBA: requiring the Department notify and bargain with the NVAC President over proposed changes in personnel policies, practices, or working conditions affecting two or more local unions;
- Article 49 of the MCBA: requiring the Department bargain with the Union prior to making changes in conditions of employment;
- 29 C.F.R. § 1904: requiring that the Department keep a record of injuries and illnesses on an OSHA 300 log and to report fatalities within 8 hours;
- 20 C.F.R. Part 10: requiring the Department to immediately report deaths due to work-related injuries to OWCP and to complete and send a CA-6 form within 10 days to OWCP;
- VHA Directive 7701: requiring the Department to initiate a Board of Inquiry (“BOI”) that investigates any work-related fatality or inpatient hospitalization of its employees;
- 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:

- Return to the *status quo ante*;
- Rescind the unilateral modification of VHA Directive 7701;

- Fully comply with its contractual obligations under Articles 2, 3, 17, 29, 30, 41, 47, and 49 of the MCBA, its regulatory obligations under 29 C.F.R. § 1904, 20 C.F.R. Part 10, and its statutory obligations under 5 U.S.C. § 7116(a)(1) and (a)(5);
- Distribute an electronic notice posting to all bargaining unit employees concerning the Agency's failure to satisfy bargaining obligations with the Union prior to implementing changes in conditions of employment;
- Agree to comply with any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.
- Agree to any and all other appropriate remedies 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 the AFGE 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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