



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-04-28-2021

7H/00397415

Date: April 28, 2021

To: Ophelia A. Vicks
Acting Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
ophelia.vicks@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 Implementing
100% Telework for Employees of the Veterans Crisis Line

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”) concerning the Department’s decision to implement a mandatory, permanent telework program for employees of the Veterans Crisis Line (“VCL”). To date, the Department has failed to remedy this violation, and as such, continues to violate the Master Agreement and federal law.

Specifically, the Department violated Articles 1, 2, 3, 13, 20, 21, 47 and 49 of the MCBA; 5 U.S.C. § 7116(a); 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

On March 29, 2021, James Wright, Acting Deputy Director, Veterans Crisis Line, sent an email to all VCL employees regarding the VCL's plan to move to a permanent, 100% telework program resulting in office closures. For employees who did not want to perform 100% telework, he hinted that there would be other arrangements made, but did not clearly explain what those arrangements might be. This email was distributed to employees without prior notice and an opportunity to bargain being provided to NVAC, and it was sent in a "locked" format, preventing employees to forward the email directly to the Union. The body of the email reads as follows:

"Hello Team VCL,

In this period of extraordinary change and uncertainty due to the COVID-19 pandemic and the 988 expansion, VCL has continued to provide 24/7 world class suicide prevention to Veterans, Service Members and their families without interruption. We were able to face this challenge in part due to the tremendous teamwork and dedication from Team VCL. We also were very fortunate to have great support from offices throughout VA to complete the transition to Telework.

Today, like much of the country, we are left with uncertainties in our lives and at work. Many things are unknown related to health, business, child-care and workplace changes. We wanted to take the time to acknowledge the discomfort that uncertainty in the future of telework/remote service for VCL has brought for many of you, and provide more information on telework/remote service, as we stand at present.

Since moving most VCL staff to telework status in April of 2020, we have reviewed data across the quadruple aim, considering quality care outcomes, Veteran and Employee Experience, and cost, efficiency, and access. We have found this change to be very effective for VCL. Because of this, Leadership views remote work as very advantageous when it comes to our efforts to provide the highest standard of service possible to the Veterans we serve. Due to the benefits we have identified, the VCL has made the decisions to move forward with a significant expansion of our telework program which will include 100% remote work.

What does this mean? For VCL employees who choose to submit a telework application for 100% remote work, your official duty station will be where you reside although you will continue receiving some services such as IT support from a physical VA facility.

The VCL plans to operate in "waves" to expand our telework capabilities.

- *The first "wave" will be a transition of current staff who wish to enter into a telework agreement for 100% remote work now. These individuals will be prioritized first*

and VCL will work to execute telework agreements and duty station assignments. Once agreements for 100% remote work are in place, your physical address of your residence will be assigned as your Official Duty Station. VCL Leadership will send out notice soon for all employees to voluntarily apply for 100% remote work, which will also include the instructions to submit a new Telework Agreement.

- *The second “wave” will involve hiring new VCL Team Members for 100% remote work. The VCL’s focus will continue to be building teams around optimal staff size and structure. I can give you confidence that it is very important to Leadership to ensure all VCL employees have the guidance and resources they need to be successful. Through our experience supporting Team Members who have been in a telework status during the pandemic, we have gained confidence in the VCL’s ability to both support our Team Members and provide excellent service to Veterans in a virtual work environment.*
- *In the future, our third “wave” will involve working with our Team Members who are unable or uncomfortable with performing 100% remote work. As it is clear our current leased space will no longer be necessary or justifiable, Leadership is currently assessing our space at each duty station and developing a plan that is in line with the significant expansion of remote work in our organization. Prior to making any impactful changes, we will diligently work with Unions, Huma [sic] Resources, Office of Information and Technology, and other stakeholders to ensure the best possible outcome for all involved parties and meet any obligations. At this time, we have not determined a timeline for completion of the third “wave.”*

We can be certain of one thing: Leadership understands the effects of so many unknowns, and we are here to support you. We will prioritize providing updates as quickly as possible, so we can all plan our lives accordingly, with as much notice as possible. Each of you is a key member of this team, reflecting the dedication to our overarching Mission. We will work together on next steps and as we have more specific information to share, we will be doing so. There will be a lot of questions that arise, and we will work to capture each of these to help staff during this transition. We will use Hot Action, team meetings, email alerts and other lines of communication to ensure staff are clear on each step along the way.

As this is a major transition in VCL history, it is also an exciting time. Opportunities will arise, VCL will grow and our commitment to those we serve will only grow stronger. Your commitment to maintaining these high-quality services throughout the challenges of the present is and will continue to be inspiring. We are grateful to all of you.

James”

As the email indicates, the VCL desires to be completely remote and apparently plans to accomplish this objective in three waves. Multiple bargaining unit employees also reported that VCL leadership began working directly with them to execute new telework agreements, therefore bypassing their exclusive representatives. Employees who did not wish to telework 100% of the time on a permanent basis were told that they would need to change their tour of duty to accommodate the schedules of supervisors who were on-site. Since the start of the Covid-19 pandemic, VCL has failed to staff supervisors onsite for all its shifts, even though there are employees who work onsite for all shifts. Supervisors have also told employees that if they do not apply for 100% telework, they will be reassigned elsewhere.

Prior to sending its March 29, 2021 email, VCL did not inform the NVAC of its intent to permanently transition its entire workforce to 100% telework, close physical offices, change the tours of duty of bargaining unit staff to accommodate the availability of on-site supervisors, or force employees into directed reassignments should they be unable to telework. Similarly, the VA failed to negotiate with NVAC over the solicitation of staff for new telework agreements, changes in their tours of duty, reassignments, and other impacts on conditions of employment. To date, the VA has failed to notify or engage in any bargaining efforts with the NVAC. The changes associated with the VCL 100% telework have a significant and substantial impact on conditions of employment for VCL employees and include, for example:

- Permanent office closures resulting in employees' homes being their official duty stations, which can also impact changes to locality pay.
- Requiring employees to permanently telework 100% of the time, rather than volunteering for such work arrangements consistent with the Telework Enhancement Act and MCBA.
- Failing to staff supervisors onsite for all shifts.
- Requiring employees who did not want to telework to change their tours of duty to accommodate supervisors' schedules.
- Reassigning employees who did not want to telework or could not work alternative shifts.
- Permanently changing tours of duties and work schedule options, beyond the duration of the COVID-19 pandemic.

These changes impact bargaining unit employees represented by multiple AFGE locals across the country¹. These unilateral modifications of the VCL's telework program constitute a change in conditions of employment that requires advance notification to the Union and an opportunity to bargain. Furthermore, by dealing with bargaining unit employees directly and without the Union's knowledge or involvement, the Department has unlawfully bypassed the Union. Lastly, the Agency violated numerous Articles of the Parties' MCBA when mandating telework beyond the duration of the Covid-19 pandemic.

¹ Including, but not limited to, AFGE Locals 518, 906, 1822, 3306, and 1539.

Violations

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

- Article 1 of the MCBA: prohibiting the Department from bypassing the Union and entering into agreements with bargaining unit employees;
- 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 13 of the MCBA: requiring the Department to negotiate over involuntary reassignments of employees;
- Article 20 of the MCBA: stipulating that telework is a voluntary program;
- Article 21 of the MCBA: requiring the Department negotiate over changes to work schedule options, alterations to, procedures concerning, and time frames for posting schedules.
- 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;
- The Telework Enhancement Act of 2010, Public Law 111-292: stipulating that telework is a voluntary program;
- 5 U.S.C. § 7116(a)(1) and (a)(5): requiring the Department to consult and negotiate in good faith with the Union and prohibiting the Department from bypassing 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*;
- Fully comply with its contractual obligations under Articles 1, 2, 3, 13, 20, 21, 47, and 49 of the MCBA, the Telework Enhancement Act, and its statutory obligations under 5 U.S.C. §7116(a);
- Distribute an electronic notice posting to all bargaining unit employees concerning the Agency's bypass of the Union and 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,



Sarah Hasan
Staff Counsel, National VA Council
AFGE, AFL-CIO
80 F Street, NW
Washington, DC 20001
Tel: 202-639-6424
Fax: 202-379-2928
hasans@afge.org

cc: Thomas McGuire, Deputy Director, OLMR
Donald Stephen, Staff Director, OLMR
Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Thomas Dargon, Supervisory Attorney, AFGE/NVAC