



**UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY**

**Charge Against an Agency**

**FOR FLRA USE ONLY**

Case No.	eOGC008110
Date Filed	

<b>1. AGENCY AGAINST WHICH CHARGE IS BROUGHT</b>	<b>2. CHARGING PARTY</b>
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<p>a. Name of Agency (include address, city, state, &amp; ZIP)</p> <p>Name of Charged Agency - N/A          Name of Charged Agency - Department of Veterans Affairs          Activity Name of Charged Agency - N/A          City of Charged Agency - Washington          State of Charged Agency - DC</p>	<p>a. Name of Charging Party (include address, city, state, &amp; ZIP)</p> <p>N/A          N/A          Party Type of Charging Party Organization or Individual - U          Local Name of Charging Party Organization or Individual -          National VA Council          City of Charging Party Organization or Individual - Salem          State of Charging Party Organization or Individual - VA</p>
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<p>b. Agency Representative (include name, title, address)</p> <p>Email Address - aaron.robison@va.gov          First Name - Aaron          Last Name - Robinson          Title - General Attorney          Street Address - 810 Vermont Ave. NW          Street Address 2 - N/A          City - Washington          State - DC</p> <p>tel. 2024615973 fax 2024955366          e-mail aaron.robison@va.gov</p>	<p>b. Charging Party Representative (include name, title, address)</p> <p>Email Address - iroberts@robertslaborlaw.com          First Name - Ibdun          Last Name - Roberts          Title - Attorney          Street Address - 9520 Berger Rd.          Street Address 2 - Suite 212          City - COLUMBIA          State - MD</p> <p>tel. 1 (202) 235-5026 fax 2022173369          e-mail iroberts@robertslaborlaw.com</p>
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**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 August 1, 2017, the NVAC filed a national grievance regarding the Department's unilateral implementation of the Accountability Act. On November 20, 2019, the Authority granted the NVAC's Exceptions to the arbitrator's denial of the grievance and found that the Accountability Act did not excuse the Department from its statutory duty to bargain. The FLRA further denied the Department's Request for Reconsideration of the decision.

The parties returned to the arbitrator and, on March 13, 2021, Arbitrator Cohen issued an Opinion and Award ordering the Parties to engage in retroactive bargaining to remedy the statutory violation. Pertinently, he awarded, "The Agency is ordered to bargain on request with the American Federation of Government Employees, National Veterans Affairs Council #53 with respect to all bargaining unit employees adversely affected by the Accountability Act which became effective on June 23, 2017. This retroactive bargaining order requires that any employee be made whole, who in any agreement reached by the parties, is determined to have suffered a loss of pay, benefits, allowances or differentials because of the Agency's unlawful conduct. The Agency is further ordered to post an electronic notice signed by the Secretary which includes the terms of this Award." Neither party filed exceptions to this Award.

To date, the Agency has failed to engage in retroactive bargaining with the Union or to post the electronic notice as ordered by the arbitrator. After the Agency's failure to draft the notice posting for four (4) months, on July 22, 2021, the Union drafted the notice posting and submitted it to the Agency. Still, the Agency has not complied with posting requirement.

Further, Agency Counsel, Aaron Robison, insists that the Agency is not required to correct its failure to bargain during retroactive bargaining. He asserted that the parties must engage in prospective bargaining. He also unilaterally determined that, upon completion of the prospective bargaining, an additional negotiation take place, where he has also designated the Union's representative to participate in the additional negotiation, the Union's Counsel. Consistent with his advice, the Agency has repeatedly provided proposals seeking to preserve, and not correct, its illegal failure to bargain. The Union took the extraordinary step of providing case law on retroactive bargaining to the Agency's Counsel. Nevertheless, the Agency persists in flouting the well-settled law in its failure to comply with the unambiguous award.

To remedy the violations, the Union requests that the Charged Party be ordered to post the electronic notice and engage in retroactive bargaining with the Union; pay attorney's fees related to this enforcement action; and post an additional electronic notice, signed by the Secretary, via electronic mail to each AFGE bargaining unit employee that it has violated the FSLMRS.

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? \_\_\_\_\_

<input type="checkbox"/> Grievance Procedure	<input type="checkbox"/> Federal Mediation and Conciliation Service	<input type="checkbox"/> Federal Service Impasses Panel
<input type="checkbox"/> Equal Employment Opportunity Commission	<input type="checkbox"/> Merit Systems Protection Board	<input type="checkbox"/> Office of Special Counsel
<input type="checkbox"/> Other Administrative or Judicial Proceeding	<input type="checkbox"/> Negotiability Appeal to FLRA	<input type="checkbox"/> 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]

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

Ibdun ROberts		09/02/2021
Type or Print Your Name	Your Signature	Date

## INSTRUCTIONS FOR COMPLETING FORM 22

### General

Use this form if you are charging that a labor organization or its agents committed an unfair labor practice under paragraph (b) and/or (c) 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, 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 CFR 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 labor organization (including the name of the local and number and its national or international affiliation, if any) you are charging and the mailing address, including the street number, city, state, zip code. If you are charging more than one labor organization with the same act, file a separate charge for each labor organization.

**#1b.** Give the full name, title and other contact information for the labor organization's representative. Be as specific and as accurate as possible.

**#2a.** Give the full name of the Charging Party and the mailing address, including the street number, city, state, zip code. If a union, and affiliated with a national organization, give both the national affiliation and local designation. If an agency, give the name of the agency and, if applicable, component.

**#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(b), and/or (c) has or have allegedly been violated. List all sections allegedly violated:

7116(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization-

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) (A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or (B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; 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.