



NATIONAL VETERANS AFFAIRS COUNCIL

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

Out of Many/One Union
AFGE NVAC/AFL-CIO

NATIONAL GRIEVANCE

NG-12/3/2021

7S/399453

Date: December 3, 2021

To: Denise Biaggi-Ayer
Executive Director
Office of Labor Management Relations
Denise.Biaggi-Ayer@va.gov
valmrlitigation@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 for unilaterally implementing a flu vaccine mandate without providing the Union notice and an opportunity to bargain**

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, Veterans Health Administration (“Department”) for failing to provide notice and an opportunity to bargain over the implementation of an influenza (“flu”) vaccine mandate for certain bargaining unit employees. To date, the Department has failed to remedy these violations, and as such, continues to violate the parties’ MCBA and federal law.

Specifically, the Department violated Articles 2, 3, 47 and 49 of the MCBA; Section §7116(a)(1), (5), and (8) of the Federal Service Labor-Management Relations Statute (the “Statute”); and any and all other relevant laws regulations, Master Agreement provisions, 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 November 10, 2021, the NVAC was notified that the South Central VA Health Care Network (known as “VISN 16”) had implemented an influenza vaccine mandate pursuant to VHA Directive 1192.01, Seasonal Influenza Vaccination Program for VHA Healthcare Personnel,¹ without providing the Union notice and an opportunity to bargain. *See* Notice of Flu Vaccine Mandate, attached as Exhibit A. The notice required that bargaining unit employees comply with the mandate by November 30, 2021, or face discipline. *Id.*

VISN 16 leadership provided notice of the vaccine mandate to AFGE Locals within the VISN’s jurisdiction.² However, wherever a change in conditions of employment affects the interests of employees at two or more locals, notice is required to be given to the NVAC President or her designee. *See* MCBA, Article 47, Section 4B. Moreover, where “exclusive recognition is at the national level, the Statute, in the absence of an agreement between the parties, or other appropriate delegation of authority, does not require negotiations at any other level.” *U.S. INS, U.S. Border Patrol, Del Rio, Tex.*, 51 F.L.R.A. 768, 789 (1996). Thus, the Department was required to provide advance notice and an opportunity to bargain to the national party—here, the NVAC. In addition to the impacted AFGE Locals throughout VISN 16, the Union is aware that the flu mandate was also unilaterally implemented in Topeka, Kansas (AFGE Local 906) and Minneapolis, Minnesota (AFGE Local 3669). These are representative examples of a nationwide violation, and the Union specifically reserves the right to add Locals to this grievance as information becomes available.

In failing to provide adequate notice and an opportunity to bargain prior to the implementation of the changes outlined here, the Department committed unfair labor practices under 5 U.S.C. § 7116(a)(1), (5) and (8). Additionally, Article 2 of the MCBA requires that the Department comply with applicable federal statutes and regulations in the administration of matters covered by the MCBA. Therefore, in violating 5 U.S.C. § 7116, as set forth above, the Department also failed to comply with Article 2. The Department also violated Article 47, Section 2, and Article 49, Section 4, which set forth the parties’ responsibilities regarding mid-term bargaining at the national level, including, the Department’s obligation to provide advance written notice to the President of the NVAC, or her designee, of changes in personnel policies, practices, or working conditions affecting the interests of two or more locals.

Additionally, Article 3 encourages the parties to maintain a cooperative labor-management relationship that is based on mutual respect, open communication, consideration of each other’s views, and minimizing collective bargaining disputes. By failing to notify, consult, and negotiate with the Union prior to mandating that bargaining unit employees receive the flu vaccine, the Department renounced its commitments under Article 3 of the MCBA and necessitated further collective bargaining disputes.

¹ VA Directive 1192.01 defines Healthcare Personnel (“HCP”) generally as “individuals who, during the influenza season, work in VHA locations or who come into contact with VA patients or other HCP as part of their duties.” *See* VA Directive 1192.01 at 3.

² VISN 16 is comprised of eight medical centers and 61 outpatient sites throughout Arkansas, Louisiana, Mississippi, and parts of Texas, Missouri, Alabama, Oklahoma and Florida.

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 parties to promote effective labor-management relationships by using cooperative methods in an effort to fulfill their collective bargaining obligations;
- Articles 47 and 49 of the MCBA: which set forth the parties' responsibilities regarding mid-term bargaining at the national level, including, the Department's obligation to provide advance written notice of changes in personnel policies, practices, or working conditions affecting the interests of two or more locals, to the NVAC President or her designee;
- 5 U.S.C. § 7116(a)(1), (5), and (8): requiring the Department to provide adequate notice of proposed changes in conditions of employment involving AFGE bargaining unit employees, and to provide the Union an opportunity to bargain prior to implementing such changes; and
- Any and all other relevant laws, regulations, customs, Master Agreement provisions and past practices not herein specified.

Remedies Requested

The Union asks that, to remedy the above situation, the Department agree to the following:

- To cease and desist further implementation of the flu vaccine mandate until its bargaining obligations with the Union are met;
- To fully comply with its contractual obligations under Articles 2, 3, 47, and 49 of the MCBA; and its statutory obligations under 5 U.S.C. § 7116(a)(1), (5) and (8);
- To make whole any bargaining unit employee adversely impacted by the Department's actions, to include the rescission of any proposed or executed disciplinary or adverse action taken against an employee for non-compliance with the VA Directive;
- To distribute an electronic notice posting, signed by the Secretary, to all BUEs concerning the Department's failure to properly provide notice and an opportunity to bargain to the NVAC over proposed changes in conditions of employment with regard to the flu vaccine mandate;

- To agree to comply with any and all other relevant laws, regulations, customs, MCBA provisions, and past practices not herein specified; and
- To 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.

Submitted by,



Shalonda Miller
NVAC Staff Attorney
AFGE, AFL-CIO
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cc: Alma Lee, President, NVAC/AFGE
Bill Wetmore, Chairperson, NVAC Grievance & Arbitration Committee, AFGE/NVAC
Thomas Dargon, Jr., Supervisory Attorney, NVAC/AFGE

EXHIBIT A

Shalonda Miller

To: Shalonda Miller
Subject: FW: Information Item (with Action): Memorandum: VHA Seasonal Influenza Vaccination Program for VHA Health Care Personnel –November 30 Deadline

From: McKay, Frenilda <Frenilda.Mckay@va.gov>
Sent: Wednesday, November 10, 2021 3:50 PM
To: Buckhanan, Cassandra F. <Cassandra.Buckhanan@VA.Gov>; Ann Fisher <Ann.Fisher@afge.org>
Cc: Newsom, Kevin S. <Kevin.Newsom@va.gov>
Subject: FW: Information Item (with Action): Memorandum: VHA Seasonal Influenza Vaccination Program for VHA Health Care Personnel –November 30 Deadline

Dear Labor Partners,

The following message was sent to all Supervisors and Chiefs. You are being notified of this as well. This has been distributed widely.

For your awareness.

Thank you!

From: McKay, Frenilda
Sent: Tuesday, November 9, 2021 10:45 AM
To: VHASHR CHIEFS <VHASHRCHIEFS@va.gov>; VHASHR SUPERVISORS <VHASHRSUPERVISORS@va.gov>
Cc: VHASHR PENTAD <VHASHRPENTAD@va.gov>; VHASHR EXECUTIVE OFFICERS <VHASHREXECUTIVEASSISTANT@va.gov>; Williams, Veronica R. - SHR <Veronica.Williams5@va.gov>; Newsom, Kevin S. <Kevin.Newsom@va.gov>; Tanga, Srimathi Moona - SHR <Srimathi.Tanga@va.gov>
Subject: FW: Information Item (with Action): Memorandum: VHA Seasonal Influenza Vaccination Program for VHA Health Care Personnel –November 30 Deadline

Good morning,

The attached [Directive 1192.01](#), which requires HCP to get a flu vaccine, remains in effect. The deadline for HCP to get vaccinated with a flu vaccine or to submit a medical

or religious exemption is November 30, 2021. Compliance with this directive is a condition of employment.

For your information and action.

For question or clarification, contact me at 4928 or Kevin Newsom at 5148.

Thank you.

From: Wright, Cynthia R. (VHAV16) <Cynthia.Wright3@va.gov>

Sent: Monday, October 4, 2021 1:19 PM

To: VISN 16 QUADRAD <VISN16QUADRAD@va.gov>

Cc: VISN 16 Leadership Council <VISN16LeadershipCouncil@va.gov>; VISN 16 All ELT Executive Assistants <VISN16ALLELTExectiveAssistants@va.gov>; VISN 16 Executive Secretaries <V16EXECSEC@med.va.gov>; VISN 16 Executive Support <VISN16ExecutiveSupport@va.gov>; Rushing, Dawn R. (VISN16) <Dawn.Rushing@va.gov>

Subject: Information Item (with Action): Memorandum: VHA Seasonal Influenza Vaccination Program for VHA Health Care Personnel –November 30 Deadline

Sending for and on behalf of
Skye McDougall, PhD
Network Director
South Central VA Health Care Network

[Information Item \(with Action\)](#)

Discussion: The Office of the Assistant Under Secretary for Health for Operations is sending the attached USH memorandum "VHA Seasonal Influenza Vaccination Program for VHA Health Care Personnel – November 30 Deadline."

1. As we begin our 2021-22 influenza "flu" season, we continue to face the challenge of caring for those with COVID-19. I thank each one of you for your dedication to the Veterans we serve and, in particular, those with COVID-19.
2. Influenza vaccination of Health Care Personnel (HCP) is central to our efforts to prevent influenza virus transmission and contributes to maintaining both a healthy environment to care for patients and a safer workplace for all employees.
3. I remind you that [Directive 1192.01](#), which requires HCP to get a flu vaccine, remains in effect. **The deadline for HCP to get vaccinated with a flu vaccine or to submit a medical or religious exemption is November 30, 2021. Compliance with this directive is a condition of employment.**
4. I am asking all VA facilities to push out messages via staff meetings, facility electronic newsletters, digital signage, and other venues to inform HCP about this requirement. I also encourage you to utilize screen savers on employee desktops to remind employees to get vaccinated.
5. Frequent handwashing, wearing masks and maintaining physical distancing continue to be critical measures to protect ourselves from COVID-19 and influenza transmission.

6. Please direct questions pertaining to Directive 1192.01 to VHAEOHProgram@va.gov. Questions related to communication methods can be directed to Michelle Spivak, VHA Office of Communications, at michelle.spivakmelinger@va.gov. Thank you for your attention to this important disease prevention matter.

Questions: Contact the VISN16CMOOffice@va.gov with any questions.

Attachments: 1