

NATIONAL GRIEVANCE

NG-12/6/2021

7S/399465

Date: December 6, 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 violating the voluntary reassignment provision of the parties’ collective bargaining agreement**

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 refusing to comply with Article 13, Section 4 of the MCBA with regard to bargaining unit employees submitting voluntary requests for reassignment. 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 and 13, the MCBA; Section §7116(a)(1) and (5) 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

The MCBA provides clear procedures for bargaining unit employees (“BUEs”) who voluntarily wish to be reassigned. It provides:

Section 4 - Voluntary Requests for Reassignment

Employees may, in writing, make the following requests under the following conditions:

A. Types of Requests:

1. *To work a particular shift within a work area (days, evenings and nights);*
2. *To work in a particular work location within the same shift (e.g., Building 4 second/pm shift);*
3. *To work in a particular building or work unit (e.g., Building 5 or Building 4-5E);*
4. *To be given relief assignments within the same shift on a continuing basis (e.g., an Environmental Management Service Housekeeping Aide or Nutrition & Food Service Worker relieves for two workers on their days off and a third employee on one day off. Examples of voluntary requests may include, but are not limited to the following: Housekeeping Aide, WG-2, to Laundry Worker, WG-2; Nursing Assistant, GS-4, to Health Technician, GS-4; File Clerk, GS-4 to Mail Clerk, GS-4);*
5. *To be reassigned to another facility;*
6. *Any additional types as negotiated locally.*

B. Conditions:

1. *An available vacancy must exist;*
2. *The employee must meet basic qualifications for the position (grade, title, and physical requirements);*
3. *The employee must be performing at an acceptable level of performance;*
4. *Requests for voluntary reassignments will be considered;*
 - a. *First, within the work area*
 - b. *Second, within the building and/or service*
 - c. *Third, within the duty station*
5. *The selected employee shall normally be released and reassigned within two pay periods after written notification.*
6. *Requests will remain active and on file until rescinded by the employee.*

Disputes involving reassignments shall be resolved through the negotiated grievance procedure. See MCBA, Article 13, Section 4.

It has come to the attention of the NVAC that Department officials have violated this provision of the MCBA on a persistent basis. On November 10, 2021, Jason G. Hogie, VISN 5

Human Resources Strategic Business Partner, notified AFGE Local 2198 that internal employees at the Beckley West Virginia VA Medical Center must apply for open job vacancies rather than request voluntary reassignments in accordance with Article 13. *See* email, attached as Exhibit A. Mr. Hogie specifically stated that there is “no local process” for requesting reassignment—a plain contradiction and patent violation of the MCBA which is binding on management, at the VISN and all levels of the Department.

Similarly, on November 18, 2021, David Skiba, the Employee and Labor Relations Strategic Business Partner in VISN 4, informed leadership at AFGE Local 2028 that “nothing forces the Agency to have to accept [voluntary requests for reassignment].” *See* email, attached as Exhibit B. Generally, in denying such requests, local management officials cite to management’s right to hire pursuant to 5 USC § 7106 (a)(2)(C)¹. But this reliance is misplaced. The MCBA provision does not encumber management’s rights with regard to *promotions*; instead, it allows BUE to request and receive an *internal, lateral* transfer, if they are otherwise qualified for the position and an opening exists, consistent with the provisions of Article 13. Notably, local management has made no contention that the provisions of the article are inapplicable or unclear; instead, they simply making blanket denials of BUE requests for voluntary reassignments under Article 13.

The Union is also aware that management officials in Huntington, West Virginia (AFGE Local 2344) and Salisbury, North Carolina (AFGE Local 1738) have failed to comply with Article 13, Section 4. 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.

Moreover, the Federal Labor Relations Authority (“the Authority”) analyses whether a party’s failure or refusal to honor an agreement constitutes a repudiation of a collective bargaining by examining (1) the nature and scope of the alleged breach of an agreement; and (2) the nature of the agreement provision allegedly breached. *See Dep’t of the Air Force 375th Mission Support Squadron, Scott AFB, Illinois*, 51 FLRA 858, 862 (1996). Under the first prong, the Authority will analyze the clarity of the provision that the charged party allegedly breached. *Dep’t of the Air Force, Aerospace Maint. & Regeneration Ctr., Davis-Monthan AFB*, 64 FLRA 355, 357 (2009). Under the second prong, the Authority focuses on the importance of the provision that was allegedly breached relative to the agreement in which it is contained. *Id.* It is well settled that repudiation of a collective bargaining agreement constitutes an unfair labor practice. *Dep’t of Defense, Warner Robins Air Logistics Center, Robins Air Force Base, GA and AFGE, Local 987*, 40 FLRA 106 (1991); *see also AFGE, AFL-CIO and EPA*, 21 FLRA 986, 988 (1986).

¹ 5 USC § 7116(a)(2)(C) states: “Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency -- in accordance with applicable laws -- with respect to filling positions, to make selections for appointments from -- (i) among properly ranked and certified candidates for promotion; or (ii) any other appropriate source[.]”

Resultingly, the VA has violated 5 U.S.C. § 7116(a)(1) and (5) of the Statute when it repudiated Article 13. In addition, 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. Additionally, Article 3 encourages the parties to maintain a cooperative labor-management relationship in an effort to minimize collective bargaining disputes. By failing to comply with the clear and unambiguous voluntary reassignment provisions of the MCBA, the Department renounced its commitments under Article 3 and necessitated further collective bargaining disputes.

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;
- Article 13 of the MCBA: which provides procedures for requesting and implementing employees' voluntary reassignment requests;
- 5 U.S.C. § 7116(a)(1) and (5): which requires that the Department abide by the negotiated terms set forth in a collective bargaining agreement; 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 denying BUEs' requests for voluntary reassignment;
- To fully comply with its contractual obligations under Articles 2, 3 and 13 of the MCBA; and its statutory obligations under 5 U.S.C. § 7116(a)(1) and (5);
- To make whole any bargaining unit employee adversely impacted by the Department's actions, to include granting any active, outstanding voluntary reassignment request as soon as administratively possible;

- To distribute an electronic notice posting to all BUEs, signed by the Secretary, concerning the Department's violation of the Statute when it repudiated the MCBA;
- To provide remedial training to responsible management officials on the requirements of Article 13 of the MCBA;
- 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
80 F Street, NW
Washington, DC 20001
O: 202-639-6424
F: 202-379-2928
shalonda.miller@afge.org

cc: Alma Lee, President, AFGE/NVAC
Bill Wetmore, Chairperson, NVAC Grievance & Arbitration Committee, AFGE/NVAC
Thomas Dargon, Jr., Supervisory Attorney, AFGE/NVAC

Exhibit A

Shalonda Miller

From: Bailey, Laura BECVAMC <Laura.Bailey1@va.gov>
Sent: Wednesday, November 10, 2021 2:36 PM
To: StClair, Laura BECVAMC
Subject: Re: Re-Assignment

I'm not the President, Melissa is still President.

But the Master Agreement Article 13 REASSIGNMENT - Section 1. A. a reassignment means a change of an employee from one position to another while serving continuously within the department, without promotion or demotion. Because they are permanent, all reassignments will be documented in the Employees EOPF

Section 4 - Employees may, in writing, make the following requests under the following conditions:

A. Types of Requests:

1. to work a particular shift within a work area.
2. To work in a particular work location within the same shift.
3. To work in a particular building.
4. To be given relief assignments within the same shift on a continuing basis.
5. To be reassigned to another facility.
6. Any additional types as negotiated locally.

B. Conditions:

1. An available vacancy must exist;
2. The employee must meet basic qualifications for the position.
3. The employee must be performing at an acceptable level of performance.
4. Requests for voluntary reassignment will be considered;

- a. First, within the work area
- b. Second, within the building and/or Service
- c. Third, within the duty station.

I don't see where Mr. Hogie does not understand the Master Agreement and how reassignment is laid out... Seems pretty simple to me!

Laura Bailey
AFGE Local 2198
Beckley, WV

From: StClair, Laura BECVAMC <Laura.StClair@va.gov>
Sent: Wednesday, November 10, 2021 2:09:44 PM
To: Bailey, Laura BECVAMC <Laura.Bailey1@va.gov>
Subject: FW: Re-Assignment

Ok....so, do I tell them to apply?

From: Hogie, Jason G BECVAMC <Jason.Hogie@va.gov>
Sent: Wednesday, November 10, 2021 2:08 PM

To: StClair, Laura BECVAMC <Laura.StClair@va.gov>; [REDACTED]
Cc: Lucas, Jennifer R. BECVAMC <Jennifer.Lucas@va.gov>; Gilger, Joshua T. BECVAMC <Joshua.Gilger@va.gov>; Watts, Lavonica R. BECVAMC <Lavonica.Watts@va.gov>; Curry, Craig M. <Craig.Curry@va.gov>
Subject: RE: Re-Assignment

Laura,

The information you received is not correct. VHA centralized its HR functions at the VISN levels effective 10/01/2019. There is no local HR function, therefore there is no local process. However, as always, any and all interested candidates are encouraged to monitor USAJOBS for vacancies in which they are interested, as USAJOBS is the official public notice mechanism.

Effective the first week of August, VHA is required by settlement agreement with AFGE National to establish a mechanism for each facility to have eight open continuous announcements to cover the eight Title 38 professions in order to satisfy Article 61 of the AFGE Master Agreement granting internal candidates first consideration for vacancies. In the settlement, the last line of the first section of the Article, which required a 14 day vacancy opening period for Title 38 positions, was struck from Article 61 of the AFGE Master Agreement. There is no minimum open period, once the Open Continuous announcement has been reviewed for referrals.

The RN announcement, which serves by far the largest pool of potential reassignment candidates, has been in effect since 9/16/21, and is included in the all-employee distribution lists periodically sent out by Ms. Lavonica Watts. The others are being established as resources are available.

Please direct all inquiries to Mr. Craig Curry, team leader for Beckley's Employee and Labor Relations support.

V/R,

Jason G. Hogie
Veterans Integrated Service Network 5 Human Resources Strategic Business Partner
Beckley VAMC
(304) 255-2121 ext. 4763
Cell (681) 368-2349
"Of the Troops and For the Troops"



[CLICK HERE FOR HR SERVICES](#)

<https://dvagov.sharepoint.com/sites/VHAV5hr/Supervisors>

Veteran in crisis and need help? Call the Veterans Crisis Line.

[Veterans Crisis Line](#) – (800)273-8255, press 1 or Text to 838255

[#Be There](#)

How was your HR service today? Please take a few moments to complete the HR Customer Service Quick Card at this link: [HR Quick Card](#).

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prohibited. If you are not the intended recipient, please contact the sender by reply e-mail or call by telephone and destroy all copies of the original message.

From: StClair, Laura BECVAMC <Laura.StClair@va.gov>
Sent: Wednesday, November 10, 2021 1:43 PM
To: Hogie, Jason G BECVAMC <Jason.Hogie@va.gov>; [REDACTED]
Cc: Lucas, Jennifer R. BECVAMC <Jennifer.Lucas@va.gov>; Gilger, Joshua T. BECVAMC <Joshua.Gilger@va.gov>; Watts, Lavonica R. BECVAMC <Lavonica.Watts@va.gov>
Subject: RE: Re-Assignment

I'm sorry. I am very new to all this and want to do it correctly. The UNION President, Laura Bailey had advised that this was the correct process and that the nurses would not need to apply. All of the nurses who are interested in the position are in this department. I was told that I could offer the re-assignment based on Seniority. If that is not the case, I am getting conflicting advice.

Thank you for all your help.

Laura

From: Hogie, Jason G BECVAMC <Jason.Hogie@va.gov>
Sent: Wednesday, November 10, 2021 1:21 PM
[REDACTED]
Cc: StClair, Laura BECVAMC <Laura.StClair@va.gov>; Lucas, Jennifer R. BECVAMC <Jennifer.Lucas@va.gov>; Gilger, Joshua T. BECVAMC <Joshua.Gilger@va.gov>; Watts, Lavonica R. BECVAMC <Lavonica.Watts@va.gov>
Subject: RE: Re-Assignment

Ma'am:

The email group you wrote to is a "dead" group. The process for an RN to indicate an interest in reassignment is to apply to the Beckley internal-only USAJOBS open continuous announcement at the following link:
<https://www.usajobs.gov/GetJob/ViewDetails/614321500#shorten-link>.

V/R,

Jason G. Hogie
Veterans Integrated Service Network 5 Human Resources Strategic Business Partner
Beckley VAMC
(304) 255-2121 ext. 4763
Cell (681) 368-2349
"Of the Troops and For the Troops"



[CLICK HERE FOR HR SERVICES](#)

<https://dvagov.sharepoint.com/sites/VHAV5hr/Supervisors>

Veteran in crisis and need help? Call the Veterans Crisis Line.

[Veterans Crisis Line](#) – (800)273-8255, press 1 or Text to 838255

[#Be There](#)

How was your HR service today? Please take a few moments to complete the HR Customer Service Quick Card at this link: [HR Quick Card](#).

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Sent: Wednesday, November 10, 2021 1:11 PM

To: VHABECSTAFFING <VHABECSTAFFING@va.gov>

Cc: StClair, Laura BECVAMC <Laura.StClair@va.gov>; Lucas, Jennifer R. BECVAMC <Jennifer.Lucas@va.gov>

Subject: Re-Assignment

Importance: High

To Whom It May Concern:

I am requesting Voluntary Re-Assignment to the position of Community Care Clinical Reviewer/Case manager for duties as assigned and tour as assigned. Thank you for your consideration.

Exhibit B

Shalonda Miller

From: Shalonda Miller
Sent: Thursday, December 2, 2021 2:36 PM
Subject: Re: MSA Position

From: Skiba, David M. <David.Skiba@va.gov>
Sent: Thursday, November 18, 2021 10:32 AM
To: Johnson, Kenneth C <Kenneth.Johnson9@va.gov>; Vaughn, Jamie <Jamie.Vaughn@va.gov>
Cc: Lydic, Lori L <Lori.Lydic@va.gov>
Subject: RE: MSA Position

Good morning,

Upon review of the request, the Agency will not be granting the AFGE request. [REDACTED] is free to apply to any available position. While the Master Agreement does allow for staff to request to be transferred if they meet the basic requirements, nothing forces the Agency to have to accept the move.

David

From: Johnson, Kenneth C <Kenneth.Johnson9@va.gov>
Sent: Wednesday, November 17, 2021 3:11 PM
To: Vaughn, Jamie <Jamie.Vaughn@va.gov>; Skiba, David M. <David.Skiba@va.gov>
Cc: Lydic, Lori L <Lori.Lydic@va.gov>
Subject: MSA Position
Importance: High

Good afternoon Jamie. On Oct 18 and 26th, I attempted through emails to communicate the request for transfer from [REDACTED] to return to his past position on the 3B Hospice unit. This position was still open. Unfortunately, you never responded to the emails which were read by you. [REDACTED] reported this morning that you informed him that the position is no longer vacant. The position was open when requested and [REDACTED] would not require training or orientation as he recently filled the position. AFGE is requesting that [REDACTED] be transferred to the 3B Hospice unit and the new hire can fill one of the many vacancies within VAPHS.

Kenneth Johnson
Exec. Vice President, AFGE Local 2028
1010 Delafield Rd.
BLDG. 50, 6A-102
Pittsburgh, Pa 15215
412-822-2006 Office
412-915-8816 Cell