DEPARTMENT OF VETERANS AFFAIRS
OFFICE LABOR-MANAGEMENT RELATIONS
WASHINGTON DC 20420

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Bill Wetmore
Third Executive Vice President
National Veterans Affairs Council (NVAC)
American Federation of Government Employees (AFGE)
Board of Veterans Appeals
VA Central Office
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Dear Mr. Wetmore:

This is in response to your October 15, 2008, national grievance regarding the social worker collaboration process. You allege that management ended the social worker collaboration process without agreeing to the union's request for an additional face-to-face meeting to discuss AFGE's unresolved issues. Your requested remedy is to cease converting social workers to hybrid status until after a face-to-face meeting is held to deal with the outstanding issues.

A. THRESHOLD ISSUES

1. The issues raised are not grievable because Public Law 108-170 authorizes the VA Secretary to discontinue discussion with the unions at the conclusion of the 30-day meet and confer period "in the sole and unreviewable discretion of the Secretary."

Public Law 108-170 amended 38 U.S.C. §§ 7401(3) to add a number of occupations to the hybrid Title 38 appointment authority. That public law also established a specific procedure for labor unions' input with respect to new systems for promotion and advancement of employees in hybrid occupations. The public law added a new provision to the Title 38 personnel statute, 38 U.S.C. §7403(h), which provides that when the VA Secretary establishes a system for the promotion and advancement of an occupational category of employees under 38 U.S.C. §7401(3), "[e]ach such system shall be planned, developed, and implemented in collaboration with, and with the participation of, exclusive employee representatives of such occupational category of employees."

While the term "collaboration" is not defined in 38 U.S.C. §7403(h), the respective rights and responsibilities of VA management and the unions are clearly delineated in the statute. Whereas the Title 5 collective bargaining procedures require that bargaining be completed through agreement or resolved by the Federal Service Impasses Panel before management can implement a negotiable change, the collaboration process spelled out in 38 U.S.C. § 7403(h) requires authorizes VA management to discontinue discussion with

the unions at the conclusion of a required 30-day meet and confer period "in the sole and unreviewable discretion of the Secretary.," and to implement the proposed system or changes. In other words, management is free to implement a system or changes for promotion and advancement of hybrid employees once it has met and conferred with the unions for 30 days, irrespective of whether management and the unions reach agreement on the unions' recommendations.

2. The issues raised are not grievable because Public Law 108-170 removes proposed systems for promotion and advancement of employees in hybrid Title 38 provisions from traditional bargaining and negotiated grievance processes.

The collaboration process is separate and distinct from the traditional collective bargaining process in the Federal Service Labor-Management Relations Statute (5 U.S.C. Chapter 71), wherein management is precluded from implementing changes in working conditions until completion of the bargaining process. The traditional bargaining process is completed when management and labor reach agreement or when a third party, the Federal Service Impasses Panel, imposes a decision to resolve the parties' impasse. By contrast, the collaboration process allows management unfettered discretion to implement a promotion and advancement system without regard to any agreement with the unions or the intervention of a third party if there is an impasse.

Moreover, the labor relations statute requires collective bargaining agreements to contain a grievance procedure that includes arbitration for the settlement of disputes. See 5 U.S.C. § 7121. There is no such requirement as part of the collaboration process. The primary purpose of a grievance procedure in traditional labor relations is for management and labor to have access to an expeditious mechanism for resolving workplace disputes with minimum disruption. While the collaboration process allows the unions to make recommendations about proposed changes, the collaboration statute does not require that such recommendations be resolved through agreement or impasse before management can implement a new system for promotion and advancement of hybrid employees. The collaboration statute does contain a mechanism for alternative dispute resolution through the FMCS (see 38 U.S.C. § 7403(h)(40(C)), but does not provide for arbitration or any other form of third party dispute resolution. Management thus has the unilateral right to implement its system once collaboration is completed, subject only to provisions for Congressional oversight of management's actions through periodic reports to Congress.

The grievance was submitted by the Chair, Grievance and Arbitration Committee, National Veterans Affairs Council, # 53, American Federation of Government Employees. AFGE is only one of four unions involved in the social worker collaboration process, yet the entire grievance, including the remedy, would affect that collaboration as it applies to all of the unions.

Based on the above, it is management's position that Section 7403(h) does not contemplate the use of a traditional labor relations grievance procedure for the settlement of disputes relating to the collaboration process. Therefore, the grievance is not grievable.

3. The portion of your grievance in paragraph 2 that pertains to issues in the 2005 collaboration is untimely.

Paragraph 2 of your grievance refers to agreement reached on a matrix of provisions for placing Title 5 employees in hybrid status "[d]uring the collaborative process pertaining to second generation hybrids not including social workers.... When this was discussed during the August 25 to 29, 2008 face-to-face meetings, VA did not deny that there was agreement on the matters set forth in the matrix but VA did not agree to comply with that agreement by adjusting any of the implementing documents for second generation hybrids or the social work hybrids being discussed at that meeting." The collaboration meetings to discuss the 22 second-generation hybrid occupations on which the agreement matrix was based were held in July 2005. VA implemented the system changes, including matters in the agreement matrix, through revisions to VA Handbook 5005 released on March 17, 2006 and May 1, 2006.

Article 42, Section 11.A of the Master Agreement requires grievances to be filed "[w]ithin thirty (30) calendar days of the act or occurrence or within thirty (30) days of the date the party became aware or should have become aware of the act or occurrence...." Your grievance is untimely to the extent that paragraph 2 alleges management noncompliance with agreements reached and implemented in 2005.

Moreover, management is observing all agreements reached during the 2005 collaboration. In this regard, AFGE's allegations of non-compliance are non-specific. If AFGE can identify any instances of alleged non-compliance with specificity, management is willing to address them with AFGE through the auspices of the Hybrid Collaboration Team.

B. MERITS OF THE GRIEVANCE

1. The grievance has no merit.

On April 7, 2008, management sent the proposed VA Handbook 5005, Part II, Appendix G39, Social Worker Qualification Standard, GS-185 to AFGE and the other national unions in accordance with 38 U.S.C. §7403(h)(2)(A). Management asked the unions to submit recommendations and comments no later than May 12, 2008, in accordance with the requirement in 38 U.S.C. §7403(h)(2) (B). This constituted the start of the formal collaboration process for changes to the social worker qualification standard.

As part of this process, a guide for special one-time boarding of social workers was sent to the unions on April 23, 2008. Management also solicited the unions' recommendations and comments on the guide. Management held a conference call with the unions on April 17, 2008, to discuss any initial questions and concerns before the deadline for recommendations.

Management carefully considered all of the recommendations, comments and questions submitted by the unions and made an initial determination as to those that were acceptable and unacceptable. In addition, management identified a number of items that were outside the scope of the social worker collaboration process because they did not address the proposed qualification standard or the boarding guide sent to the unions in April 2008.

Because management considered some of the unions' recommendations not acceptable, management was required to "meet and confer with such exclusive employee representatives, for a period not less than 30 days, for purposes of attempting to reach an agreement on whether and how to proceed with the portion of the recommendations that the Secretary determined not to accept." 38 U.S.C. § 7403(h)(4)(B). In letters dated July 31, 2008, management notified the unions that the 30-day period for "meet and confer" would run from August 25, 2008 through September 24, 2008. Management scheduled a face-to-face meeting in Washington, DC August 25 through August 29, and set aside the week of September 15, 2008, for a second face-to-face meeting if necessary. Additionally, management stated its willingness to schedule conference calls during the weeks of September 2 and September 8, and any other dates within the 30-day period beginning on August 25 and ending on September 24.

A mediator from the FMCS actively participated during the entire face-to-face session in August. Management addressed each of the unions' recommendations and comments at that session. By the end of the week, the parties reached agreement on the qualification standard and on most of the provisions of the boarding guide. At the end of the week, management determined the vast majority of unresolved matters to be outside of the scope of collaboration on the social worker qualification standard. Conference calls on the remaining issues were held on September 10 and September 19, within the 30-day meet and confer period.

Management has clearly complied with all of the requirements in the collaboration law. The unions were notified and given 30 days to comment and provide recommendations on the proposed social worker qualification standard and boarding guide. A conference call was held during this 30-day period to answer any questions. During the 30-day period to meet and confer, the parties met face-to-face for one week with a mediator and agreed to the majority of issues. Two conference calls were held the next month and additional conference calls were offered but not accepted. The small number of unresolved issues related to the social worker collaboration did not warrant the expense of another face-to-face meeting when less expensive conference calls would suffice.

Moreover, management has afforded the unions continuing opportunities for input into the hybrid conversion process consistent with 38 U.S.C. § 7403(h)(6). During the 2005 conversion of the 22 second-generation occupations to hybrid status, management established a Hybrid Collaboration Team (HCT) consisting of representatives from each of the four national unions and management officials who are responsible for the hybrid process. This team was formed to address hybrid issues outside of the formal collaboration periods when management proposes a new system of promotion and advancement or modifies an existing system. Although management declared several of the unions' recommendations and comments to be outside the scope of social worker collaboration, it did not refuse to discuss them; rather, management has repeatedly offered to consider and discuss such issues during HCT meetings as opposed to being part of the formal social worker collaboration period.

2. The requested remedy is unreasonable.

The remedy requested in the grievance is "that no implementation of converting social workers to hybrid status occurs until all of our concerns have been thoroughly satisfied." With the exception of wanting a face-to-face meeting, AFGE has not clearly articulated specific concerns. To the extent that you have concerns about agreements reached or not reached during the social worker collaboration process, we require specific details in order to address them. As previously explained, matters addressed in the 2005 collaboration are beyond the scope of collaboration on the social worker qualification standard. Moreover, as stated above, management has fully complied with its obligations under the collaboration statute and has unfettered discretion to implement the new social worker qualification standard at this time, subject only to the Congressional notification requirement set forth in 38 U.S.C. § 7403(h)(40(D). As a result, your requested remedy is unreasonable. Thus, they provide no basis for AFGE's requested remedy. Nonetheless, as we noted, management is willing to any AFGE specific non-compliance concerns.

Based on the above, your grievance is denied.

Sincerely yours,

Meghan Flanz
Deputy Assistant Secretary
for Labor-Management Relations