



**NATIONAL VETERANS
AFFAIRS COUNCIL**
American Federation of Government Employees
AFFILIATED WITH THE AFL-CIO

April 13, 2011

Department of Veterans Affairs
Labor Management Relations
ATT: Leslie Wiggins, Deputy Assistant Secretary
810 Vermont Ave., N.W.
Washington, DC 20420

RE: Filing of National Grievance, NG-4/13/2011

Dear Ms. Wiggins,

Enclosed please find a national grievance filed regarding the Agency's failure to comply with Public Law 111-163 ("Caregiver Act") concerning probationary periods for Title 38 employees appointed under 38 U.S.C. §7405.

Thank you for your prompt attention to this matter. Please feel free to contact me at the number below.

Sincerely,

Ami Pendergrass
Staff Attorney
AFGE/NVAC

Cc: Alma Lee, William Wetmore



APR 20 2011

NATIONAL GRIEVANCE
NG-04/13/2011

Date: April 13, 2011

To: Leslie Wiggins
Deputy Assistant Secretary,
Labor – Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

From: Ami Pendergrass, Attorney, National Veterans Affairs Council (#53) (NVAC), American Federation of Government Employees (AFGE), AFL-CIO

Subject: National Grievance in the matter of the Department of Veterans Affairs (VA) failure to comply with Public Law 111-163 (“Caregivers Act”) concerning probationary periods for Title 38 employees appointed under 38 U.S.C. §7405.

STATEMENT OF CHARGES

Pursuant to the provisions of Article 42, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (1997) (MCBA), American Federation of Government Employees/National Veterans Affairs Council (Union) is filing this national grievance against you and all other associated Department of Veterans Affairs (“VA”) officials and/or individuals acting as agents on behalf of the VA for violations as it relates to its failure to comply with Public Law 111 -163 (“Caregiver Act”) concerning probationary periods for Title 38 employees appointed under 38 U.S.C. §7405.

Specifically, on or about March 15, 2011 and continuously thereafter, the VA, by and through its representatives and/or agents, has:

- (1) Required as a condition for part-time status that all part-time registered nurses agree to a memorandum which prohibits part-time experience from counting toward the employee’s probationary period.

In doing so, the VA has violated the following provisions:

- (1) Section 601(b) and (c) of the Caregiver Act; and
- (2) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

APR 20 2011

STATEMENT OF THE CASE:

I. Background

On May 5, 2010, President Obama signed into effect Public Law 111-163, the Caregivers and Veterans Omnibus Health Services Act of 2010 (“Caregivers Act”). Among the provisions of that Act were Sections 601(b) and (c), which provided amendments to 38 U.S.C. §§ 7403(b) and 7405 concerning the probationary periods for part-time registered nurses. The amendment to Section 7403 of Title 38 required that the probationary period be applicable to both part-time and full-time nurses. Section 7405 was amended to limit the temporary appointment period for a part-time registered nurse to a two-year period and the time spent would serve as a probationary period. Upon completion of the two year period, the appointment would no longer be considered temporary and the employee would be considered an appointment under Section 7403(b).

On March 15, 2011, an employee at the Minneapolis VAMC received a memorandum, dated the same date, requiring as a condition of part-time status that the employee agree to the terms which included “part-time experience does not count toward completion of a probationary period. Service Computation Date (SCD) is undisturbed by part-time tour of duty.” (See Attachment A) This language appears on its face to be in violation of Section 601(b) and (c) of the Caregiver Act.

II. Violation

The March 15, 2011 memorandum setting forth conditions for part-time status for registered nurses unlawfully requires that the affected registered nurse sign away his or her right to have time counted toward probationary status as required under Section 601(b) and (c) of the Caregiver Act.

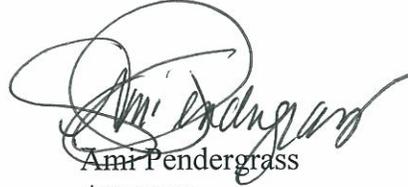
III. Remedy Requested

The Union asks that to remedy the above situation, the VA agrees to the following:

- (1) To agree to cease and desist use of this memorandum with the prohibited language;
- (2) To agree to properly access and correct the probationary period of any and all part-time registered nurses affected by the Agency’s prohibited position; and
- (3) To agree to any and all other remedies appropriate in this matter.

IV. 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 regarding this National Grievance, please feel free to contact me at (202) 306-3664.

A handwritten signature in black ink, appearing to read "Ami Pendergrass", is written over a circular stamp or seal.

Ami Pendergrass
Attorney
AFGE/NVAC

Cc: Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC

ATTACHMENT A



Department of
Veterans Affairs

Memorandum

Date: March 15, 2011

From: Director, Human Resources

Subj: Change to Part-time – Registered Nurse

To: Shelly Hughes

1. The purpose of this memorandum is to inform you of the effect on the conditions of your employment when you change from full-time to part-time status.
2. As a part-time registered nurse, the following will apply to you:
 - a. **Tenure** – Part-time experience does not count toward completion of a probationary period. Service Computation Date (SCD) is undisturbed by part-time tour of duty. A part-time registered nurse is not covered by the adverse action, disciplinary action, or VA grievance procedures (including the right to a Disciplinary Appeals Board hearing). Dependent on the needs of the VA, part-time services may be terminated without employee access to VA appeal procedures afforded full-time, permanent, Title 38 staff. Rights under the VA/AFGE Master Agreement are not affected.
 - b. **Earnings** – The annual salary rate will not be affected, but the pay received is based on the reduced number of hours each pay period in the pay status. The hourly pay rate is the same for full-time, part-time and intermittent employees. Waiting periods for periodic step increases are not affected; they are based on calendar weeks of creditable service.
 - c. **Holiday Pay** – This is paid for service performed on the actual calendar holiday. An employee may be excused with pay for a holiday which occurs within such employee's regularly scheduled tour of duty. A part-time employee who is not scheduled to work on a holiday will not be paid for the holiday or allowed other time off.
 - d. **Call Back Pay** – A part-time employee is entitled when appropriate. When called back to duty such an employee shall receive pay at the same hourly rate for non-overtime work and at the overtime rate for overtime work.
 - e. **Saturday/Sunday Premium pay/Overtime/Night Differential** – A part-time employee is entitled to such pay when applicable duty is performed.
 - f. **Promotion** – Part-time employees receive full credit toward meeting time-in-grade waiting periods on the same basis as full-time employees. However, in computing experience requirements, part-time experience is prorated (i.e. one year of service at 20 hours per week would be counted as six months experience).
 - g. **Training** – The Director may permit Authorized Absence in the same manner as for full-time employees.

- h. **Leave** – Annual leave will accrue at the rate of one hour for each 10 hours in a pay status. Sick leave will accrue at the rate of one hour for each 20 hours in pay status. At the end of this leave year, maximum annual leave carryover will be either 240 hours, or the amount of leave the employee had accrued at the time of their change to part-time, whichever is more. For each subsequent leave year, the maximum annual leave carryover will be either 240 hours or the balance at the beginning of this year, whichever is more.
- i. **Life Insurance Coverage** – If an employee has coverage under the Federal Employees Group Life Insurance program, their coverage will be reduced to the amount of their salary projected to a yearly total (to the next higher thousand), plus \$2,000, but will not be less than \$10,000. The premium will be reduced accordingly. If the employee has Option B (additional in a multiple of your annual salary rate), the coverage will be reduced similarly and the premium will be reduced accordingly. Options A and C will be unaffected.
- j. **Health Insurance Coverage** – If an employee has coverage under the Federal Employees Health Benefits Program, the amount of the benefits will not be affected. However, if their part-time hours are between 16 and 32 per week, the VA contribution will be reduced proportionate to the reduction in the number of hours scheduled to work, and therefore, their biweekly premiums will be increased accordingly. If the employee works unscheduled hours, that will not affect the premium – the tour of duty establishes the premium. Within 31 days from the date of the change to part-time, the employee may change their enrollment, if they wish to do so, from one plan or option to another.
- k. **Retirement Date Eligibility** – Part-time employees receive full credit for retirement as service is credited based on weeks worked, not hours worked.
- l. **Retirement Annuity** – The computation is based on the highest average annual basic pay for any three consecutive years and the employee's length of service. The annuities of employees who served at any time on a less than full-time basis on a Title 38 appointment in the Department of Veterans Affairs are subject to pro-ration. A pro-ration factor is equal to a total of the employee's career full-time and part-time tour of duty hours divided by full-time duty hours over the same period of time. The pro-ration factor would be a percentage which is less than 100%. Unscheduled hours that are worked are not given credit in the retirement annuity – it is the tour of duty that is utilized. Out staff can provide additional information regarding estimates of annuities.
- m. **Returning to Full Time Duty** – Requires a full-time opening, concurrence from the selecting official, and possibly the Nurse Professional Standards Board approval.
3. If you have any questions regarding these or other benefits, please feel free to contact the Retirement and Benefits Section in Human Resources Management Service at extension 2060.

ANNETTE FLOM

I have received a copy of this memorandum.

Date: _____