

NATIONAL GRIEVANCE

NG-04/28/2011

Date: April 28, 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 , Veterans Benefit Administration’s (VBA) unlawful practice of charging “union time” in ASPEN to bargaining unit employees who are not Union officials.

STATEMENT OF CHARGES

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 (Union) is filing this national grievance against you and all other associated Department of Veterans Affairs, Veterans Benefit Administration (“VBA) officials and/or individuals acting as agents on behalf of the VBA for violations as it relates to its engagement in the unlawful practice of charging bargaining unit employees who seek representation from the Union as engaging in “union time” in ASPEN.

Specifically, since on or about April 2011 and on a continuous and on-going basis, the VBA, by and through its representatives and/or agents, has:

- (1) At multiple regional offices, including but not limited to the Cleveland VA Regional Office and the St. Petersburg VA Regional Office, has engaged in the unlawful practice of tracking and recording time used by bargaining unit employees seeking representation as “union time” in ASPEN.

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

- (1) 5 U.S.C. § 7131 *et al.*;
- (2) Articles 48 and 49 of the MCBA; and

- (3) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

STATEMENT OF THE CASE:

I. Background

Each business line of the VBA responsible for the processing of compensation and pension benefits utilize a time keeping system called ASPEN. Employees are responsible for updating ASPEN with information to account for the work they perform on a daily basis. As part of the accounting, employees who are also representatives of the local Union are required to input "union time" when he or she is engaged in representational activities. Those bargaining unit employees, who are not otherwise engaged in representational activity as a representative of the local Union or are by appointment asked to perform representational activity in a limited basis, are required to put "other" into the ASPEN system for the time the employee uses to seek assistance from his or her local Union. It is understood that the designation of "union time" and "other" allows VBA management to understand the reason that an employee has time away from his or her work station and the ASPEN records are then used to assist with the reporting of official time to VBA central office

On or about April 2011, NVAC was contacted by the AFGE Local 2328's Vice President concerning the practice of inputting all time concerning the Union, **including both time engaged in representational activities and time receiving representation**, as "union time" in ASPEN. NVAC Third Executive Vice President Bill Wetmore contacted the Cleveland VA Regional Office and was told by the Acting Director that, in fact, all employees, whether they were engaged in representation or seeking representation, were to report their time in such an activity as "union time".

NVAC contacted several other facilities and learned that a similar practice had occurred in other facilities, including St. Petersburg, where the VA Regional Office, engaging in a similar practice, had reported to VBA central office that in 2010, 8,000 hours of official time hours were used by AFGE Local 1594. After filing an information request with the local facility, AFGE Local 1594 learned that the actual number of hours on record were 3,571.50 hours, a significant difference that could be attributable, at least in part, to the inaccurate reporting in ASPEN.

Based on the information received, Mr. Wetmore contacted both VBA Representatives, Mike Walcoff and Bill Carson, concerning the matter. Neither individual responded to the request to resolve this matter, prompting the filing of this national grievance.

II. Violation

Entitlement to official time under 5 U.S.C. § 7131 accrues only to those employees who are bargaining unit members serving in the capacity of representative for the exclusive representative at an agency. 2750th Air Base Wing Hq., AFLC and Wright Patterson AFB Fire Fighters Local

F-88, IAFF, 7 FLRA 738, 741-42 (1982). An employee who is not serving as a representative but is merely seeking the assistance of the Union, such as requesting that a grievance be filed or to exercise his or her Weingarten rights, does not perform these functions under official time and as in this case, is not being granted official time by either local regional office cited above. However, by requiring that each individual employee who seeks representation report his or her time as "union time", the local facilities in question are presenting to VBA central office that these employees are, in fact, engaged in official time activities and therefore, are creating a false record of the number of actual hours spent in official time. As evidenced in the St. Petersburg case, this discrepancy can be dramatic. This practices violates both 5 U.S.C. §7131 and Articles 48 and 49 of the MCBA.

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 the above practice immediately;
- (2) To agree to properly access and correct all records in each regional office in violation for a period of at least five years ; 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.



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