

Justin Wigg
6/11/2010

NATIONAL GRIEVANCE
NG-06/10/10

Date: June 10, 2010

To: Leslie Wiggins
Deputy Assistant Secretary,
Labor – Management Relations
Department of Veterans Affairs
1575 I Street, NW, Suite 250
Washington, D.C. 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) breach of the March 2010 National MOU regarding National VSR Performance Standards in violation of the various agreements, statutes, regulations, and past practice/customs, as set forth below.

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), AFGE/NVAC (Union) is filing this national grievance against you and all other associated officials and/or individuals acting as agents on behalf of the VA for violations as it relates to VA's breach of the March 2010 Memorandum of Understanding: Revised National Performance Plan, Veterans Service Representatives ("2010 MOU"). Specifically, on or about April 20, 2010, the VA, by and through its representatives and/or agents, has:

- (1) Breached the 2010 MOU, specifically Paragraph 12, by ordering local negotiations over national performance standards in violation of Article 26, Section 5(I) of the MCBA;
- (2) Failed to implement and enforce the VA's own policy concerning the national performance standards as presented to the Union and agreed to by the parties in the 2010 MOU.
- (3) In violation of the 2010 MOU, Article 16, and 5 U.S.C. 2301, ordered the development of local standards for VSRS that are inequitable in violation of the merit system principle of equal pay for equal work.

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

- (1) Memorandum of Understanding: Revised National Performance Plan, Veterans Service Representatives, March 4, 2010
- (2) Article 26 of the MCBA *et. al.*, specifically Article 26, Section 5(I);

- (3) Article 16 of the MCBA *et. al*, specifically Art. 16 §1;
- (4) Title 5, Chapter 71, specifically 5 U.S.C. §§7106(b)(2) and (b)(3), and 7116 (a),(1),(5) and (7);
- (5) Title 5, Chapter 23, specifically 5 U.S.C. §2301(b)(3);
- (6) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

STATEMENT OF THE CASE:

I. Background

The national mid-term bargaining team for AFGE ("the Union") and representatives of the VA, Veteran Benefits Administration meet over the course of 2009 and 2010 to negotiate the appropriate arrangements for implementation of revised national performance standards for the position of Veteran Service Representatives ("VSRs"). These standards, which were developed and decided on exclusively by management, were presented to the Union as national performance standards and the resulting bargaining concerned the appropriate arrangements for execution of the standards, as permitted by 5 U.S.C. §7106(b)(3). On March 4, 2010, representatives from both parties executed the 2010 MOU which represented the VA's new policy on VSR national performance standards and contained the agreed upon appropriate arrangements the parties would follow to implement the VA's decision.

On March 22, 2010, a letter written by Diana M. Rubens, Associate Deputy Under Secretary for Field Operations, OFO Letter 20F-10-04, was sent to all VA Regional Offices and Centers containing advice on how to implement the Revised National VSR Performance Plan. In the letter, the VA took the position that the new 2010 Performance Plan represented the minimum performance standards and served as the floor for negotiation of local standards. However, based on the plain language of the 2010 MOU and discussions at the negotiation table, the VSR standards presented by the VA were for national performance standards.

The language of the 2010 MOU represented a significant change from its 2005 predecessor. The 2005 language was clear on its face that the standards served as a floor and that each local station could bargain higher standards. The 2010 MOU, with exception to the timeliness element, speaks of the new standards as national standards and, unlike the 2005 language, contained no language indicating that these standards are minimum standards or are open to local negotiations.

In addition, the 2010 MOU was signed under the new 2006 Article 26 language, which includes the new provision in Article 26, Section 5(I), which reads:

When the Department mandates national performance standards, all bargaining obligations with the Union shall be met at the national level.

Article 26, Section 5(I) was not found in the MCBA prior to the 2006 amendment and therefore, the 2005 MOU was not subject to this provision.

Therefore, based on the language of the 2010 MOU, which established national standards, President Alma Lee sent a letter dated April 7, 2010 to the VA, requesting that the VA enforce the national performance standards they set in the 2010 MOU and that if management wished to exercise their right to change those standards, to do so within compliance of Article 26, Section 5(I) and 5 U.S.C. § 7106(b)(2) and (3).

Bill Carson, Labor and Employee Relations Specialist for VBA sent a letter dated April 20, 2010 in response to the Union's position, stating that the right to assign work is the right of management and therefore, no waiver was made by the VA prohibiting them from establishing local standards. In regards to Article 26, the VA's only position is that local standards do not require national bargaining.

II. Violation

The VA's position in the March 22nd letter raises two issues: (1) whether the language of the 2010 MOU designates bargaining at the local level on the VSR standards; and (2) whether the 2010 MOU standards serve as a minimum or "floor" standard. It is the position of the Union that the VA presented national performance standards (with the exception of timeliness which could not be determined uniformly) and the parties then negotiated appropriate arrangements concerning those national standards. The issue raised by Mr. Carson is a red herring; the Union does not dispute that management has a right under 5 U.S.C. § 7106 to assign work, including the development of performance standards. In fact, this is exactly what happened when the VA developed the current national standards and presented them to the mid-term bargaining team. The Union, however, has a right under 5 U.S.C. § 7106(b)(3) to bargain appropriate arrangements concerning the exercise of management rights. In both the 2010 MOU and the new 2006 Article 26, the parties have agreed that any changes to a national performance standard trigger an obligation to bargain the appropriate arrangements and procedures of that change at the national level. This was a negotiated procedure permissible under 5 U.S.C. § 7106(b)(2) in which the parties agree and that the Union is obligated to enforce. The Union is merely asking for the VA to enforce the decision it clearly made and to follow the agreed upon language in bargaining appropriate arrangements as required by the new 2006 language concerning national standards.

In addition, the VA's call for the establishment of local standards raises the issue of equal pay for equal work. 5 U.S.C. § 2301 calls for every government agency to provide that:

Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

It is well known that, historically, when the VA has set the standards locally, it has resulted, based on geography alone, in a wide discrepancy in work load expectations for VSRs whose compensation does not reflect these differences. The national standards that the VA has proposed and executed resolve that matter within compliance with 5 U.S.C. § 2301. Failure to enforce the VA's own standards which it reduced to policy in March 2010 creates an inequity

that violates the statute and the MCBA's own language in Article 16, which requires equal treatment.

III. Remedy Requested

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

- (1) To enforce the national performance standards that the VA reduced to policy and executed on March 4, 2010;
- (2) To enforce the appropriate arrangements negotiated by the Union and the VA and executed on March 4, 2010;
- (3) To comply with Article 26, Section 5(I) concerning the procedure the VA must follow in order to bargain over appropriate arrangements and procedures for any new changes to national performance standards;
- (4) To cease and desist all local bargaining, except as it applies to timeliness, in compliance with both the 2010 MOU and Article 26;
- (5) To post a jointly drafted notice for all employees, in the appropriate conspicuous place, outlining the violations noted above and the steps that the VA will take to remedy its actions.

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
Attorney
AFGE/NVAC

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