

d
S/1/10

NATIONAL GRIEVANCE
NG-05/13/10

Date: May 13, 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) full denial of the transfer of national official time by National Veterans Affairs Council 1st Executive Vice President (“EVP”) Mary Jean (“MJ”) Burke to local officials in Local 609.

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 VA officials and/or individuals acting as agents on behalf of the VA for violations as it relates to the full denial of the transfer of national official time by EVP Burke to officials in AFGE Local 609 (“Local 609”) by the Chief Human Resource Officer, Corey Baute at the Roudebush VA Medical Center on or about April 7, 2010. **The parties, by mutual agreement and in an effort to resolve the matter informally, agreed to a time extension of Friday, May 14, 2010 for the filing of the grievance in this matter.** (Appendix A). Specifically, since on or about April 7, 2010, the VA, by and through its representatives and/or agents, has:

- (1) Improperly denied the full transfer of national official time of EVP Burke of 1.0 FTEE of her EVP time to Union representatives at Local 609.

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

- (1) Article 45 of the MCBA *et. al*, specifically Art. 45 §§1 and 2;
- (2) 5 U.S.C. § 7102 *et. al*;
- (3) Various contractual, past practice, and locally negotiated agreements as it relates to the transfer of national official time by MJ Burke to Union representatives;
- (4) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

STATEMENT OF THE CASE:

I. Background

In 2003, Local 609 and the VA requested the assistance of the Federal Service Impasses Panel to resolve differences over the amount and distribution of local official time to union representatives at Local 609. The result of mediation is found in Case No. 03 FSIP 29 (“impasse decision”) whereby the parties agreed that local union representatives would receive a total of 1.4 FTEE official time; the Local president would receive .6 FTEE of local time and all other Union representatives would receive no more than .4 FTEE of local time.

In 2007, Secretary- Treasurer and National Safety Representative, MJ Burke, was elected First Executive Vice President of the National Veterans Affairs Council and received 1 FTEE of national official time as a result. EVP Burke was also a member of the national negotiating team for a new master agreement and was receiving 1 FTEE for her time on the team. Therefore, as a result of the 2007 election, pursuant to Article 45, Section 2 of the MCBA, EVP Burke and Local 609 President Teri James sent a memo on February 2, 2008 to then Human Resources Chief Herbert, distributing 1 FTEE of EVP Burke’s official EVP time. This increased the total amount of official time at Local 609 to 2.4 FTEE, consisting of 1.4 FTEE of local time as dictated by the impasse decision and 1 FTEE of EVP Burke’s national time. Management adopted the changes which remained in effect until 2010.

On February 12, 2010, President James sent a letter to current Human Resources Chief, Coury Baute, concerning a change in the allotment of time as a result of the temporary departure of Local Vice President Rob Robbins. At the time of Vice President Robbin’s departure, he utilized .6 FTEE, consisting of .4 FTEE of local time as dictated by the impasse decision and .2 FTEE of EVP Burke’s EVP time as dictated by Article 45 of the MCBA. President James distributed Vice President Robbin’s time to Union representatives Camen Green and Judy Kelly, which would increase each individual’s allotment of official time to .9 FTEE a piece, a .3 FTEE increase for each representative. Of that .3 FTEE increase, .2 FTEE were a result of Vice President Robbin’s local time and .1 FTEE of Robbin’s portion of EVP Burke’s time.

After several informal conversation exchanges between the VA and Local 609, Human Resources Chief Baute informed Local 609 in a memo dated March 24, 2010 that the VA, based on the reasoning found in the impasse decision, would cap Local 609 at a total of 1.4 FTEE. As a result, the 1 FTEE of EVP Burke’s time was removed from all Union representatives’ time. The parties engaged in continuing dialogue in attempt to resolve the matter. However, on or about April 7, 2010, Human Resource Chief Baute maintained the VA’s position regarding denial.

Attorneys at both the National Veterans Affairs Council and VA Labor Management Relations met on several occasions by phone to discuss resolution of the above matter. These discussions have been unsuccessful in resolving the matter informally, therefore necessitating the filing of this grievance.

II. Violation

The VA relies on the 2003 impasse decision as authority to remove the use of EVP Burke's national official time. However, the language of the impasse decision applies only to the allowance and distribution of local time to local officials. The rules for distribution of excess official time by a national Union representative or officer is found in Article 45, Section 2 of the MCBA, which provides that a national Union representative "may designate a Union representative at their home station and transfer unused official time to that representative to perform the duties of the position for which official time is authorized."

The VA's reliance on the 2003 impasse decision to limit the ability of a national Union representative to distribute official time is in violation of the terms of the impasse decision, Article 45, and the agreed upon procedure that the parties have followed to distribute such time since 2008.

In addition, the VA's labor management counsel argues that EVP Burke would be disallowed from distributing her official time under Article 45 unless the receiver of official time at the local level utilizes the official time to perform the duties of an EVP. However, this interpretation runs afoul of the purpose of such language which was to allow a national Union representative to distribute his or her excess time to local union officials to conduct the authorized official time duties as outlined in Article 45, Section 1. To adopt the VA's position runs counter to the original intent of the language and creates a scenario whereby a national Union official would have to transfer his or her position along with his or her time, which is and has been a prohibited activity per the Union's constitution and by-laws. Assuming *arguendo*, that the VA's position entails only the transfer of the official time duties to local representatives and not the transfer of position or authority of a national representative, in this current matter, an EVP can handle grievances, other representational functions, and lobbying at the local level. Therefore, the VA's position creates no discernable difference in the distribution of EVP Burke's time both now or as it was before the denial.

III. Remedy Requested

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

- (1) To restore the distribution of EVP Burke's national time to the status quo prior to the final April 7, 2010 determination.
- (2) 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.
- (3) To agree to grant the arbitrator exclusive jurisdiction for 120 days after final decision in order to assist with any issues raised concerning enforcement and/or compliance.

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

APPENDIX A

From: pendergrassnvac <pendergrassnvac@aol.com>
To: Frassinelli, Mark <mark.frassinelli@va.gov>
Bcc: pendergrassnvac@aol.com
Subject: Re: setting up time to discuss official time issue
Date: Wed, May 5, 2010 5:30 pm

Sounds good - 202-306-3664.

Sent from my Verizon Wireless Phone

----- Reply message -----
From: "Frassinelli, Mark"
Date: Wed, May 5, 2010 4:08 PM
Subject: setting up time to discuss official time issue
To:

Sure ... split the difference and go with 3:30PM Monday? Just let me know what number to call you at.

From: pendergrassnvac@aol.com [<mailto:pendergrassnvac@aol.com>]
Sent: Wednesday, May 05, 2010 4:07 PM
To: Frassinelli, Mark
Subject: Re: setting up time to discuss official time issue

Hi Mark,

That would be terrific - that will give you time to catch up on the case and us both time to get this resolved informally. Tell you what, for sake of scheduling issues on my end, lets go for Monday afternoon at 3 or 4 if that works.

Thanks Mark

Ami

Sent from my Verizon Wireless Phone

----- Reply message -----
From: "Frassinelli, Mark"
Date: Wed, May 5, 2010 3:20 PM
Subject: setting up time to discuss official time issue
To: "Ami Pendergrass"

Ami, I have no objection granting an extension of seven calendar days for you to file your grievance, giving you until Friday, May 14, 2010, based on the email below. I'm still working through the facts in the case and have not yet come to a conclusion on the validity of the grievance. And as a litigator, I can appreciate someone nothing have to work up a document for the sake of meeting a deadline when there is a possibility of resolution outside of litigation.

Based on your move schedule, is it better for you not to talk at 2PM on Friday or will you be stationary at that time? I'd like to discuss the matter with you at that time so long as it does not cause a major burden on your

Re: setting up time to discuss official time issue

schedule.

Please let me know if you have any other questions in the interim.

Thanks: MEF

MARK EMILIO FRASSINELLI, ESQ.
Attorney Advisor to the DAS
Office of Labor Management Relations
Department of Veterans Affairs
7180 Highland Drive
Pittsburgh, PA 15206

(P) 412.954.5177

(C) 412.398.4261

(F) 412.954.5181

WARNING: This message may contain sensitive information that constitutes attorney work-product or information protected under the attorney-client privilege. This information may be protected from disclosure under the Privacy Act, the Freedom of Information Act and/or the Federal Service Labor-Management Relations Statute. If you are not the intended receiver of this information or if you otherwise received this message in error, please discard the entire message, along with any attachments, and notify the sender immediately.

q Think Green! Please do not print this email unless it is necessary.

From: Ami Pendergrass [<mailto:pendergrassnvac@aol.com>]
Sent: Wednesday, May 05, 2010 2:56 PM
To: Frassinelli, Mark; Biaggi-Ayer, Denise
Subject: Re: setting up time to discuss official time issue

Hi Mark and Denise,

Thursday is fine to discuss the Legcon matter, Denise. I can talk at 2 on Friday, Mark though I will be traveling to get my furniture to complete my move. My only issue with Friday is that since the grievance for the matter in Indianapolis is due on Friday, I will have to have the grievance delivered over to Leslie's office by Bill on Friday and will copy you on it Mark so we can discuss, unless you want to move the date back another couple of days to see what we can work out. Let me know as soon as possible; otherwise, I'll proceed as is.

Thanks,

Ami

Ami Pendergrass, Esq.
Attorney
AFGE/NVAC

P.O. Box 6328
Cleveland, Ohio 44101

(202) 306-3664
pendergrassnvac@aol.com

"This email and its attachments are intended as attorney/client communication and may contain attorney work product. Use of this information is intended for the use of the addressee(s) named herein and may contain privileged and/or confiden