



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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By Facsimile and Regular Mail

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for Labor-Management Relations
Department of Veterans Affairs
1575 I Street, NW, Suite 250
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Subject: **National Grievance**

This is a National Grievance filed by the American Federation of Government Employees (AFGE) in accordance with Article 42, Section 11, of the Master Agreement between the Department of Veterans Affairs (VA) and AFGE ("Master Agreement") signed March 21, 1997. This National Grievance is filed against you and any other associated VA officials for violations of the Master Agreement Articles 4, Sections 1A and B, Article 45, Section 1B, past practice and all other related laws and regulations, including but not limited to Title 5, as a result of your denial of official time for AFGE-VA union representatives attending the 2009 AFGE Human Rights Training Conference during the week of March 23 to March 26, 2009 in Las Vegas, Nevada.

The relevant provisions of Article 4 of the Master Agreement, entitled "Labor-Management Relations Training" provide the following:

Section 1 - Union Sponsored or Requested Labor-Management Relations Training

A. The parties agree that Union sponsored labor-management relations (LMR) training is of mutual benefit when it covers appropriate areas (examples are: contract administration, grievance handling and information relating to Federal personnel/labor relations laws, regulations, and procedures). Training which relates to internal union business will not be conducted or attended on official time.

B. Scheduling arrangements for the use of official time for training will be determined locally. Management personnel responsible for work scheduling will be given appropriate and adequate notice, to include specific agendas, of scheduled LMR training for maximum attendance.

Additionally, under the pertinent sections of Article 45, entitled "Official Time", the following relevant language is set forth:



Section 1 - Purpose

The parties recognize that good communications are vital to positive and constructive relationships between the Union and VA Management. These communications should facilitate and encourage the amicable settlement of disputes between employees and Management involving conditions of employment and should contribute to the effective and efficient conduct of public business. They further recognize that this consolidated unit is very large and complex and requires Union coordination of its representational activities at several levels. Thus, official time shall be granted in amounts specified by this Agreement or otherwise negotiated for the purpose of: B. Handling other representational functions

Initially, AFGE notes that every two years for the last twenty years, under the leadership of the AFGE National Vice President for Women's and Fair Practices (WFP), the Women's and Fair Practices Department, along with the Human Rights Committee; host a Human Rights Training Conference, inviting participants throughout the nation to join in the goals of the union and the Departments¹. These Training bring together AFGE members for intensive week-long classes. This year's conference featured many different workshops held daily from 8:00 am to 5:00 pm on federal sector labor-management and civil rights issues, including featured training tracks which included Equal Employment Opportunity(EEO) training, basic, intermediate and advanced training, Stewards training, WFP Coordinator training, Financial Officers training, (DOL requirement), New Leaders training, Collective Bargaining and Conflict Resolution.

AFGE notes that, on January 9, 2009, Bonnie M. Kerber, VHA HRM Group, sent an email message to VA management officials nationwide regarding the "AFGE 2009 Human Rights Conference. In that message, Ms Kerber asserted that VA had "received several inquiries concerning AFGE's 2009 Human Rights Training Conference to be held March 23-26, 2009 in Las Vegas" and then stated the following:

Based on the conference agenda and Article 4 of the Master Agreement, the following is what does not appear appropriate for official time:

Coordinator Boot Camp; Financial Officers Training (the portion that deals with Fiduciary responsibilities conducting audits and budget preparation), New Leaders Training, Recruit, Organize and Retain Volunteers and Conflict Resolution if AFGE does not participate in mediation at your facility unless you determine that your local needs this type of training.

¹ The 2004 AFGE Human Rights Training Conference was cancelled due to the Florida hurricanes).

Ms Kerber further related that "the Master Agreement, Article 45, Section 10A, each site should have at least one Union official with at least 40% official time." In this regard, she stated:

Some sites may have negotiated additional official time for local union officials. Union officials should be allowed to use the negotiated amount of official time for training purposes based on the contract provisions where staffing permits. Additionally, facilities should review what time has been given in the past when considering requests for official time including travel time for the Human Rights Training Conference. If you have given official time for travel in the previous years you should do so again. There is no contractual requirement to give official time for travel. You should ask union officials to provide information on what sessions they are attending or what they attended when they return.

This National Grievance is being filed because following the conclusion of the AFGE Human Rights Training Conference on March 26, 2009, AFGE VA was informed that many AFGE union representatives were notified that official time would be denied or had been arbitrarily denied official time/administrative leave to attend this years' AFGE Human Rights Training Conference in Las Vegas, Nevada and were required to use their annual leave to attend the conference, i.e., to travel to the conference, attend various workshops, etc. In this regard, AFGE argues that this years' conference has the same or similar agendas and format as the previous AFGE Human Rights Training Conferences for which VA officials were granted official time or administrative leave in the past.² AFGE maintains that official time or administrative leave for this triennial training has been provided in the past, pursuant to the relevant provisions in the Master Agreement. Thus, VA's arguments for denial of this years request are arbitrary and without merit.

AFGE notes that union representatives submitted their request for official time well in advance of the need to use it and in a proper and timely fashion as set forth in Article 4. AFGE maintains that no where in the Master Agreement are Union representatives required to use their personal annual leave for training. Indeed, under Article 32, "Time and Leave", Section A, provides that: Annual Leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes. Further, under Article 32, interest." Section 21 "Excused Absence (Administrative Leave), "[e]xcused absence (sometimes referred to as administrative leave) is absence from assigned duties without charge to leave or loss of pay. The parties agree that excused absence may be granted for activities which are in the Government's interest."

² In 2005, AFGE filed a National Grievance after VA initially denied official time or administrative leave for some of the workshops for several of the workshops. However, the parties settled the matter on March 2, 2007 with most of the leave or official time being restored. The Union notes that prior to 2005, the past practice of the parties had been to grant official time or administrative leave for this conference upon request.

Further, nothing in the Master Agreement equates annual leave to duty time or official time for training. Thus, a change by VA officials in this regard constitutes a unilateral change in working conditions in violation of 5 U.S.C. § 7116(a) (1) (a) and 5. See Norwalk Naval Shipyard and Tidewater Virginia Federal Employees Metal Trades Council, 4 FLRA 686 (1980). Further, an Agency may not change unilaterally a condition of employment established through past practice even if the condition established by the past practice differs from the express terms of the parties' collective bargaining agreement. See Patent and Trademark Office and Patent Office Professional Ass'n, 39 FLRA 1477 (1991).

Additionally, AFGE's National Vice President for Women's and Fair Practices, Andrea Brooks has noted that the AFGE Human Rights Training Conference has always been open to any member, and thus far, VA is the only agency denying official time in this manner. AFGE union representatives in many other federal government agencies throughout the country attend this triennial conference with the full support of their respective agencies because of the mutual benefit this training provides to the agencies and AFGE.

Moreover, AFGE notes that training is such an integral part of the "Agency Mission" that VA and AFGE negotiated Article 4, "Labor-Management Training" which specifically focuses on labor-management training. In this regard, AFGE points to Article 4, Section 1A which reads as follows: [t]he parties agree that Union sponsored labor-management relations (LMR) training is of *mutual benefit* when it covers appropriate areas (examples are: contract administration, grievance handling and information relating to Federal personnel/labor relations laws, regulations, and procedures). (Emphasis added).

While AFGE relates that Ms Kerber did not specifically state that the official time should not be granted for the EEO workshops (AFGE is continuing the process of determining all of the denials of official time, including denials of official time to attend or travel for the EEO workshops), AFGE asserts that all of the workshops in the AFGE Human Rights Training Conference are either interrelated and/or set with the specific goal of training AFGE union representatives to work in concert with agency in a manner which will be of mutual benefit to both VA and AFGE. Indeed, VA and AFGE have clearly identified the extreme importance of the EEO arena and EEO issues by specifically dedicating Article 17 of the Master Agreement to the subject of "Equal Employment Opportunity". Notably, under Section 1 of this Article, the "Department and the Union affirm[ed] their commitment to the policy of providing equal employment opportunities to all employees and to prohibit discrimination because of race, color, religion, sex (including sexual harassment), sexual orientation, national origin, age (40 years of age and over), or disabling condition."

In this regard, AFGE points out that on a daily basis the conference held workshops specifically geared toward EEO training, including, but not limited to EEO law and procedures, preparing cases, mediation and discovery and preparing for the actual hearing. AFGE notes that under Article 17, Section A, VA and AFGE "agree[d] to establish a two- (2) year joint pilot program to assess and improve the Department's EEO

Program with the formation of a National EEO Review Committee” with the parties appointing representatives to serve on this Committee and the National EEO Review Committee to:

- Bring to the attention of the Department any trend, problems, issues, or circumstances that upon the Committee’s review should be changed to improve the Department’s EEO Program;

- Review EEO and Affirmative Employment Plans and Programs and recommend actions which would contribute to the success or improvement of these programs; provide advice and assistance regarding specific personnel management practices and problems of an EEO nature which adversely affect employees and/or the Department’s mission (e.g., merit promotion procedures, selection for training, distribution of awards, and disciplinary actions); and

- Provide recommendations concerning the communication and promotion of the Department’s EEO Program and goals; and serve as a forum for the consideration of ideas submitted by the Union and/or the Department to improve the EEO Program or presented in response to Committee recommendations.

Therefore, AFGE maintains that as a result of the extensive and comprehensive nature of this area of the training, AFGE union representatives will be able to substantially contribute to the Agency’s mission and commitment to EEO initiatives and programs, thus, official time should have been granted to the union officials who attended the workshops that were held at the 2009 Human Rights Training in Las Vegas, Nevada.

As noted above, Ms Korbcr also stated that some workshops were “not appropriate for official time” and with respect to “Conflict Resolution”, she related that “if AFGE does not participate in mediation at your facility unless you determine that your local needs this type of training”. AFGE maintains that the Conflict Resolution workshop is also a training that is of mutual benefit to the parties and that official time should have been granted for it. In this vein, AFGE points to the parties’ Master Agreement Article 6 – Alternative Dispute Resolution. Indeed, Section 1 – Commitment states that “[t]he Department and the National VA Council are committed to the use of Alternative Dispute Resolution (ADR) problem-solving methods to foster a good labor/management Relationship. Further, in part, it points out that:

Union and Management at all levels should be committed to the use of ADR problem-solving methods as a *priority* to resolve disputed matters. Those involved in the development and use of an ADR system shall be trained in the principles and methods of ADR. (Emphasis added).

Section 2 - Definitions and Intentions

A. ADR is an informal process which seeks early resolution of employee(s), union, and management disputes.

B. Any ADR process must be jointly designed by Union and Management. ADR should be effective, timely, and efficient. *It should focus on conflict resolution and problemsolving and foster a cooperative labor and management relationship.* (Emphasis added).

D. The parties agree to ongoing evaluation to improve the process.

As revealed by this section of Article 6, it is readily apparent that the parties agreed that "Conflict Resolution" should be a focal point in its commitment to the ADR program at all levels, therefore, even if mediation is not currently used at some of the individual facilities, the parties have determined that use of ADR/Conflict Resolutions is a "priority", therefore, official time should be granted for the Conflict Resolution course for all AFGE representatives.

Additionally, the Union notes that Ms Kerber stated that the Financial Officers Training the portion that deals with Fiduciary responsibilities conducting audits and budget preparation was not appropriate for official time. The Union asserts that the Federal Relations Authority (FLRA) previously determined that "[t]he reports required by 5 U.S.C. 7120 (c) are externally imposed upon the labor organization for the purpose of making available to the public information regarding the conduct of union affairs. *See American Federation of Government Employees, Local 2823 and Veterans Administration Regional Office, Cleveland, OH, 2 FLRA (October 9, 1979).*

In this vein, AFGE maintains that all of its Financial Officers duties are related to their Fiduciary responsibilities for AFGE and subject to the full scrutiny of the general public and by the Department of Labor upon its requests or notice for review of the Union's financial records in their entirety. According to Law.com, "fiduciary" is "a person (or a business like a bank or stock brokerage) who has the power and obligation to act for another (often called the beneficiary) under circumstances which require total trust, good faith and honesty." Thus, all of the training for the Financial Officers provided at the Human Rights Training Conference are essential for the previously mentioned review and official time should be granted for entire, and it should not be official times should not be portioned for official time to granted for only a certain percentage of the workshop.

The Union also believes that official time should be given for all of the workshops, including the other workshops specifically mentioned by Ms Kerber, i.e., Coordinator Boot Camp and the New Leaders Training as all of these trainings will provide AFGE union representatives with the training, background and skills which will give them the necessary tools to better serve both parties and, in turn, which will be a mutual benefit to the both parties,

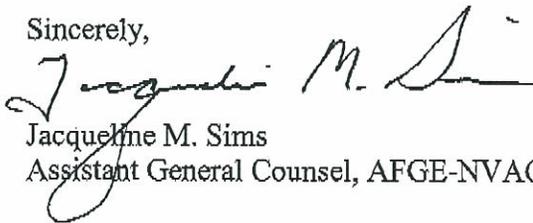
Finally, AFGE notes Ms Kerber's comments regarding the issue of official time for AFGE union representatives to travel to the Human Rights Training Conference. AFGE points out that it has been a longstanding past practice for the Agency to grant official time for travel for this training conference as well as for numerous other AFGE sponsored and joint trainings for AFGE union representatives. This notion of possibly denying official time for travel because Ms Kerber states that "there is no contractual requirement to give official time for travel" is a unilateral change in working conditions established by the longstanding past practice of official time being granted for travel.

Therefore, official time should be granted for travel for the 2009 AFGE Human Rights Training Conference.

As a remedy, for the above-noted violations AFGE requests that: (1) you and any other associated VA officials shall: 1) cease and desist from denying AFGE Union representatives requests for official time or administrative leave to attend the 2009 AFGE Human Rights Training Conference; 2) convert all AFGE Union representatives currently approved annual leave for the conference to administrative leave; 3) grant all currently pending or future AFGE Union representatives requests for official time or administrative leave to attend the AFGE Human Rights Training Conference.

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 202-639-6425.

Sincerely,



Jacqueline M. Sims
Assistant General Counsel, AFGE-NVAC

cc: Alma L. Lee, President, AFGE-NVAC
William Wetmore, Chairperson, Grievance and Arbitration
Committee, AFGE-NVAC
Andrea Brooks, AFGE National Vice President for Women's and Fair Practices