



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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June 27, 2008

By Facsimile and Regular Mail

Meghin Flanz
Deputy Assistant Secretary
for Labor-Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Re: 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 Article 22 – Merit Promotions, specifically, but not limited to, Sections 8, 10 and 11 and any and all other pertinent laws and regulations, as a result of VA's implementation and use of the Office of Personnel Management's (OPM) USA Staffing (internet accessible software program) in conjunction with USA Jobs (the official job site of the Federal Government; a source for Federal jobs and employment information) to automate "the recruitment, assessment, referral, and notification process."

According to OPM, "[t]he USA Staffing web-based system is the most cost-effective means of getting the best-qualified candidates for public sector hiring in a single, integrated software solution." Additionally, OPM noted that "[t]he complex staffing process of the public sector is simplified with this user-friendly, web-enabled software that completely automates the recruitment, assessment, referral, and notification processes." Further, it reported the following:

USA Staffing automatically:

- Generates vacancy announcements
- Posts vacancy announcements on USAJOBS
- Accepts applications via Internet, phone, or fax
- Analyzes applicant competencies and qualifications
- Rates and ranks job applicants
- Covers all available hiring flexibilities
- Produces and updates certificates

- Notifies applicants
- Manages applicant records
- Meets all regulatory requirements and can be adapted for agency specific procedures

(Attachment 1)

On March 28, 2007, you sent letters to Alma L. Lee, President, AFGE-National VA Council (NVAC) and Oscar L. Williams, Jr., Second Executive Vice President, AFGE-NVAC regarding VA's selection of "OPM' automated staffing software, USA Staffing, as the software program of choice to process and manage job applications." You noted that VA began "a 3-phase roll-out plan for Department-wide implementation in September 2005." Additionally, you stated that, at that time, VA was in Phase 2 in which VA would "continue the roll out, and assess USA Staffing implementation and training at select VA sites [and] that VA has a total of 58 users at 14 offices." (Attachment 2)

Also, in your letter, you pointed to three areas setting forth "the benefits and changes related to the use of USA Staffing". The areas that you referenced were the "Benefits to using USA Staffing", "Changes in the Existing Application Process" and "What will not Change". In the section regarding the changes in the existing application process, you noted the following changes:

- Applicants must apply online or via fax (to a processing center in Macon, Georgia)
- No panels for 10 or more qualified candidates, etc.
- Management/Subject Matter Experts would be involved in the development of the occupational questions, similar to the development of KSAOs
- Eliminate supervisory and/or panel determination of Best Qualified candidates
- Responses to vacancy-related occupational questions are mandatory. If applicant does not complete questions, the system considers the application incomplete
- Tie breaking process in the system is typically defaulted to a random number process versus the current process which uses service computation date. However, the system has the following options associated with the referral list. . . .

(Attachment 2)

Finally, you stated that several things would not change. You listed those areas as:

- Area of consideration
- Information contained in the vacancy announcement
- Length of time vacancies will be posted

- Applicants may still be required to submit hard copy documents, e.g., transcripts, SF-50, OF-306, DD 214, SF-15

(Attachment 2)

On April 5, 2007, Mr. Williams (Chairperson, Mid-Term Bargaining Committee) sent you a letter notifying you that NVAC was "formally demanding to bargain on VA's use of USA Staffing recruitment and application for filling AFGE bargaining unit positions." He also related that "[t]he implementation of this process without prior notice to the exclusive representative constitutes a by-pass and refutation of the collective bargaining agreement." Moreover, he stated that "[t]he Department shall cease and desist implementation at those facilities where AFGE/NVAC bargaining unit positions are been filled using the USA Staffing process." (Attachment 3)

Mr. Williams noted that:

I have spoken with several AFGE/NVAC Representatives and Local President[s] that have indicated that HR Staff at VA Puget Sound HCS, American Lake, WA and Louis Stokes Cleveland Medical Center, Brooksville, having been filling bargaining unit positions with USA Staffing software.

(Attachment 3)

Finally, he stated that "[t]he USA Staffing process would change Article 22 of the VA/AFGE Master Agreement currently under national negotiation." Mr. Williams maintained the following:

The USA Staffing process would change Article 22 of the VA/AFGE Master Agreement currently under national negotiation[s]. Article 22 does not allow[sic] the parties to make any change through Mid-Term Bargaining. Therefore[,] the implementation of USA Staffing or any similar process can only be made during term negotiation[s].

(Attachment 3)

An undated and signed VA "White Paper" regarding "USA Staffing and AFGE Negotiations" revealed VA's perceptions on the benefits of using USA Staffing. It further disclosed AFGE's position regarding possible mid-term negotiations over USA Staffing. Further, the "White Paper" disclosed the following, in pertinent part:
(Attachment 4)

LMR has notified AFGE of its desires to use USA Staffing in connection with positions within the AFGE bargaining unit. If USA Staffing is utilized most expeditiously, its use would conflict with several provisions of the 1997 AFGE master agreement, including the following:

- Article 22, Section 10.C. (requiring that a panel be convened to rate and rank applicants whenever there are more than eight (8) qualified promotion candidates in the first area of consideration)
- Article 22, Sect 11.C. (providing that VA Form 5-46-76a “will be the primary source document used to evaluate qualifications and to rate and rank candidates”)

(Attachment 4)

On July 9, 2007, Paul J. Hutter, Executive in Charge of the Office of Human Resources and Administration sent a letter to Ms Lee regarding a conversation between Ms Lee, you and Thomas J. Hogan about VA’s concerns relating to the use of USA Staffing. He stated that VA was specifically interested in “negotiating with AFGE-NVAC on a mid-term basis over the use of USA Staffing to process employment applications submitted by AFGE bargaining unit members.” (Attachment 5)

Mr. Hutter noted that Ms Lee stated that she “would be willing to negotiate over the use of USA Staffing now, rather than as part of the on-going master agreement renegotiation, if the Department would agree to (1) immediately implement Arbitrator Wasserman’s May 30, 2007, decision and award in Federal Mediation and Conciliation Service (FMCS) Case Number : 04-53970-A (Saturday Premium Pay Eligibility for Veterans Health Administration Employees); and (2) carry over into the new master agreement the official time provisions set forth in the 1997 agreement.” (Attachment 5)

Additionally, Mr. Hutter stated that he had “considered the concessions you requested, discussed them with our Master Agreement Negotiating Team, and have determined that they are disproportionate to our request concerning Article 22.” He also noted that “during our call, the Department has filed exceptions to Arbitrator Wasserman’s award, rather than implement it immediately as you have demanded.” Further, Mr. Hutter stated that “[m]oreover, I am informed that the parties have spent extensive time re-negotiating the official time article, and feel it best to let that negotiation process continue undisturbed.” (Attachment 5)

Finally, Mr. Hutter noted that “I am disappointed that we could not agree upon a mid-term bargaining procedure for USA Staffing, but I am assured that the Department will be able to make adequate use of the USA staffing program in connection with non-AFGE bargaining unit applicants.” He stated that Ms Lee was free to call him if she wanted to discuss the matter further. (Attachment 5)

On January 13, 2008, Mr. Hutter (General Counsel) sent a letter to Ms. Lee referring to a July 3, 2007 telephone call that they had “to discuss the Department’s interest in using OPM’s electronic recruitment technology, known as USA Staffing, and in negotiating with AFGE-NVAC over the use of that technology as a midterm item.” He related that he wanted to “revisit that issue with [Ms Lee] at this time and bring [her] up to date on the Department’s progress in moving forward with this important recruitment tool.” Mr. Hutter asked that Ms Lee let him know when she was available to meet with him and

VA's new Assistant Secretary for Human Resources and Administration, Michael W. Hager to discuss the matter. (Attachment 6)

On April 11, 2008, Deborah Cederholm, President, AFGE Local 3884 in Fargo, North Dakota filed a Second Step Grievance with Jason Wells, VA Director for Human Resources in Fargo, North Dakota regarding "Job Announcements". Ms Cederholm noted that "[o]n or about April 6, 2008 it came to the attention of AFGE Local 3884 that management is allowing and has allowed Job Announcements to be posted in The Forum classified ads and in usajobs.gov." She contended that this practice was a violation of Article 22, Section 8 of the Master Agreement, "Memorandum of Understanding: Vacancy Announcements and Areas of Consideration, dated 9-7-2004" and that the matter had been brought to the attention of Mr. Wells "during a recent negotiation on April 2, 2008." Ms Cederholm requested the following remedies: (Attachment 7)

From this date forward all open announcements and jobs not yet selected will be selected from internal candidates first according to our AFGE Master Agreement and our MOU dated 9-7-04.

Human Resources Management will cease and desist the bypass of Article 22, Section 8(H) in the provision of a copy of the vacancy announcements that are being posted and the prior notification of these vacancy postings outside the facility in usajobs.gov and any and all newspaper classified ads.

All vacancy announcements that are posted externally be closed and re-announced internally according to the AFGE Master Agreement.

Priority consideration will be given to the employees who were not given proper consideration due to the job announcements being announced externally, thus bypassing the AFGE Master Agreement.

(Attachment 7)

On April 25, 2008, Mr. Wells sent Ms Cederholm, a response to her 2nd Step Grievance, dated April 11, 2008. Mr. Wells noted that the "Agency recognizes its obligations contained in Article 22 of the Master Agreement, and re-emphasized in the MOU of 9/7/04, to first consider internal candidates for selection for those positions subject to those agreements." He also related that: (Attachment 8)

The Agency will continue to first supply hiring Supervisors and Managers with certificates listing only internal applicants, as applicable, unless prior agreement has been obtained from AFGE to do otherwise.

The Agency understands that AFGE may not have been notified in advance in each instance when the Agency desired to recruit from simultaneous sources. This was in error, and will be rectified immediately. AFGE will be notified as a matter of process in each instance when the Agency plans to advertise for

positions within the AFGE bargaining unit. Notice will be provided to AFGE primarily via e-mail.

This will resolve all issues associated with this grievance.

(Attachment 8)

Thereafter, between April 30, 2008 and May 2, 2008, Joyce Brienen, VA Accounts Receivable Assistant, Business Office and Mr. Wells exchanged e-mail message regarding "clarification on the 2nd Step Grievance". Mr. Wells stated that "we would continue to cooperate with AFGE on the areas of consideration when necessary . . . making sure internal applicants receive first consideration." However, he related that "I would also say not to confuse advertising with areas of consideration . . . [w]e don't believe that we are required to gain AFGE approval prior to advertising any particular position." Mr. Wells maintained that "Section 7106 of the Federal Service Labor management Relations Statute identifies the right to hire as a right of management . . . Advertising is intricately tied to the right to hire and we do not believe that advertising is subject to limitations in Article 22, Section 8." (Attachment 9)

Also, on May 2, 2008, Ms Cederholm filed a Third Step Grievance with Robert P. McDivitt, VA Medical Center Director, reiterating the points that she made in her Second Step Grievance. (Attachment 10)

On May 14, 2008, Melissa Miklos, Local President at the Beckley, West Virginia VA Medical Center (BEVAMC) forwarded an e-mail message to William Wetmore, AFGE-NVAC, 3rd Executive Vice President and Chairperson, AFGE-NVAC Grievance and Arbitration Committee that was sent from Debbie Voloski, Public Affairs Specialist at BEVAMC to "VHABECEVERYONE". In Ms Voloski's message, she noted, in part, that: (Attachment 11)

HR will also soon be switching over to USA STAFFING; a faster, more accessible way for applicants to apply for positions at our facility! The entire application process will be done online. From submission to selection . . . everything will be automated!

(Attachment 11)

On May 13, 2008, Mr. McDivitt sent Ms Cederholm a memorandum denying AFGE Local 3884's Third Step Grievance. He related that he believed that "[t]he remedies that you proposed in your grievance would limit the right to hire, and that is something to which I will not agree." Mr. McDivitt provided several remedies that he believed would settle the grievance. (Attachment 12)

On May 15, 2008, Ms Cederholm sent Ms Lee a fax with several attachments relating to the recent grievances filed by the AFGE Local 3884 due to violations of Article 22 of the Master Agreement, including VA management's posting of "Job Announcements" in the

local newspaper and on usajobs.gov. On the fax cover sheet, Ms Cederholm stated that “[m]anagement has been advertising unilaterally in newspapers/USA Jobs simultaneously without our o.k.” Ms Cederholm also noted that: (Attachment 13)

HR has been sending the lists of qualified internal and external certs [sic] to the managers. We objected and filed a grievance. It has been our experience that managers want to interview both internal and external applicants at the same time and pick from both internal and external. We are not asked to be in on all interviews but when we are we bring up the contract language, Article 22.

(Attachment 13)

Ms Cederholm asked Ms Lee, as a one of the negotiators of the 1997 Master Agreement, whether it was the intent of the contract language as management responds in the 3rd step of the grievance. You don’t provide the response until later. Maybe it would be better to lay out the chronology of the Cederholm grievance and then tell us that she faxed it to Alma? She also noted that she did not believe that this “is an isolated incident of the interpretation of Article 22.” Ms Cederholm asked Ms Lee whether a National Grievance should be filed on this issue.

(Attachment 13)

At this point, AFGE notes that the pertinent provisions of Article 22 of the Master Agreement provide the following, in part:

Section 8 – Vacancy Announcements and Areas of Consideration

A. All positions to be competitively filled in the bargaining unit by actions covered by this Article shall be posted unless filled under Section 7 which provides for exclusions from coverage. For the same type of vacancy (title, series, and grade), a certificate may be used for up to ninety (90) days to refer candidates without re-announcing the vacancy.

B. Prior to considering candidates from outside the AFGE bargaining unit, the Employer agrees to first consider internal candidates for selection.

C. Areas of Consideration:

The areas of consideration will be: FIRST - Facilitywide (including satellites) except:

1. This area may be made more narrow or expanded through mutual agreement.
2. Where evidence suggests that the area of consideration is not expected to produce at least three qualified candidates, it may be expanded. The vacancy announcement will identify the expanded area of consideration.

3. For VA Headquarters unit positions, GS-12 and above, the area of consideration may be expanded.

However, in all cases, (1, 2, and 3 above), first and full consideration shall be given to any best qualified candidates within the facility (or more narrow area).

SECOND - Any other promotion candidate or candidate required to compete from other VA facilities.

Section 10 - Panel for Competitive Action

A. Panel Membership Requirements - Subject to Section 10C., panels will be established for all competitive actions. Panel members shall be instructed in the tasks necessary to perform the panel's function.

Panels for bargaining unit positions will include two (2) bargaining unit employees chosen with the concurrence of the Union. Absent mutual agreement, Management reserves the right to appoint panel members following discussions with the Union and informing the Union of the reasons for its decision.

The parties recognize that some competitive actions may require larger or smaller panels.

The Department may determine the necessary panel size.

Section 11 - Sources of Information on Candidates

A. Any awards the applicants have received must be considered by the selection panel but only to the extent they are relevant to the rating factors/job elements for the position being filled.

B. Once applications are received and the selecting panel convened, no other information on a candidate may be gathered unless with the approval of the panel.

C. VA Form 5-46-76a, Employee Supplemental Qualifications Statement, is to be used, and it will be the primary source document used to evaluate qualifications and to rate and rank candidates.

Members of the panel should be familiar with the job requirements of the position(s) being filled.

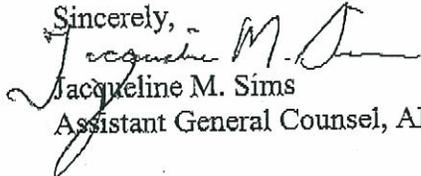
AFGE has recently learned that USA Staffing has been rolled out to about 500 users and will be rolled out to 800 by fiscal year 2009. Additionally, it has been informed that, to date, seventy-two AFGE locals have reported that USA Jobs is used to fill positions in their respective facilities

As a remedy, for the above-noted violations, AFGE requests that you and any other associated VA officials: (1) shall immediately cease and desist from using

OPM's USA Staffing in conjunction with USA Jobs for filling AFGE bargaining unit positions in violation of Article 22, specifically, but not limited to, Sections 8, 10 and 11 of the parties' signed 1997 Master Agreement and any and all other pertinent laws, regulations and Master Agreement provisions; (2) shall comply with the relevant sections of Article 22 of the Master Agreement and any and all other relevant laws, regulations and Master Agreement provisions for processing and managing job applications for AFGE bargaining unit applicants and for AFGE bargaining unit positions; (3) shall forward all open announcements to AFGE and for those jobs/positions not yet selected, and comply with the relevant sections of Article 22 of the Master Agreement; (4) shall close all job and vacancy announcements that are posted externally and re-announce them according to the relevant sections of Article 22 of the Master Agreement; and (5) shall give priority consideration to those AFGE bargaining unit employees who were not given proper consideration due to the fact that the job announcements were not made in compliance with the relevant sections of Article 22 of the parties' signed 1997 Master Agreement.

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