



# AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

**John Gage**  
National President

**J. David Cox, Sr.**  
National Secretary-Treasurer

**Andrea E. Brooks**  
National Vice President for  
Women and Fair Practices

September 30, 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: Response to Grievance Response and Counter-Grievance**

This response is filed by the American Federation of Government Employees (AFGE) in response to the Department of Veterans Affairs' (VA) August 4, 2008 "Grievance Response and Counter-Grievance" to AFGE's June 27, 2008 National Grievance (National Grievance) in accordance with Article 42, Section 11, of the Master Agreement between the VA and AFGE ("Master Agreement") signed March 21, 1997<sup>1</sup>.

AFGE notes that the June 27, 2008 National Grievance was 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."

**Notice to Invoke Arbitration**

Pursuant to Article 40, Section 11, of the VA-AFGE Master Agreement, AFGE invokes arbitration in conjunction with an unresolved National Grievance. AFGE notes that in VA's response to AFGE's National Grievance, you stated, in part, that "[w]hile the VA-AFGE Master Agreement governs areas of consideration for internal recruitments, that Agreement does not govern external recruitment or prohibit management from recruiting both internally and externally for a bargaining position." Additionally, you determined

<sup>1</sup>A request for an extension of time through September 30, 2008 was granted by Ms Serwin Flanz via email on September 3, 2008. See Article 42, Sections 8 and 11.



that “[t]he Department’s use of USAJOBS to advertise vacancy announcements to external candidates is thus not a violation of the VA-AFGE Master Agreement, and the June 27, 2008, National Grievance is denied on this basis.” Further, AFGE notes that you made several contentions and arguments with respect to VA’s use of USA Staffing. AFGE does not agree with your assertions and maintains that this is a continuing violation that has not been resolved and therefore, moves to invoke arbitration in this matter.

### Response to Counter-Grievance

Initially, in response to VA’s “Counter-Grievance” to AFGE’s National Grievance regarding USA Staffing, AFGE points out that Article 42, Section 11 of the Master Agreement sets forth a specific procedure for responding to “[g]rievances between the Department and the Union at the national level.” Indeed, the parties have clearly set forth a procedure for responding to the national level grievances under Article 42, Section 11B which has been in place since March 21, 1997, which states, in part, that:

**A final written decision**, including any position on grievability or arbitrability, **must be rendered** by the respondent within forty-five (45) days of receipt of the grievance. (Emphasis added).

AFGE maintains that no where under Article 42, Section 11 of the Master Agreement or elsewhere under Article 42, “Grievance Procedure” or in any other article of the parties’ collective bargaining agreement have the parties incorporated any provision or procedure for either party to file a “Counter-Grievance”. Moreover, as revealed above, the parties have clearly mandated that “**a final decision . . . must be rendered** by the respondent within 45 days of the grievance. (Emphasis added). Further, a similar review of the procedures under Article 42, Section 7 regarding procedures for local grievances, does not disclose that the parties provided any language or incorporate any provisions for filing “Counter-Grievances” as a part of the procedural process for grievances when the Master Agreement was executed. Therefore, VA’s “Counter-Grievance” is denied.

Moreover, assuming *arguendo* that a procedure for responding to a national level grievance with a “Counter-Grievance” instead of, or in lieu of, a “final written decision within 45 days was incorporated in the Master Agreement, in this case, the “Counter-Grievance” would still be denied as untimely. In your “Counter-Grievance, you related that “[t]he Department is willing to negotiate with AFGE-NVAC a procedure that would allow the HR specialist to use the automated system to do his or her portion of the recruitment work but would retain the panel process called for in Article 22.”

Additionally, you related that the Department is also willing to negotiate with AFGE-NVAC an internal announcement and application process that would preserve the substantive procedures required by Article 22 while allowing the Department to automate and expedite the recruitment process generally.” You also noted your beliefs that nothing in “Article 22 or in the July 2003 ground rules governing the ongoing VA-AFGE Master Agreement renegotiation prohibits mid-term bargaining over a procedure for automating

the recruitment process in a manner that is consistent with the substantive procedures of Article 22." Thereafter, you stated that "[t]he Department thereby grieves AFGE-NVAC's refusal to bargain over the impact and implementation aspects of USA Staffing as a mid-term item in accordance with Article 44, Section 2 of the VA-AFGE Master Agreement." (Emphasis added).

However, as noted in its National Grievance, 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." At that time, you also related that "[i]f you are interested in a briefing or **would like to bargain on this subject**, please contact Denise Biaggi-Ayer **no later than April 26, 2007.**"

Then, 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

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].** (Emphasis added).

Further, as noted in the National Grievance, 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." However, at that time, he determined that "concessions" requested by AFGE were disproportionate to VA's request regarding Article 22, and noted VA's disappointment regarding the disagreement.

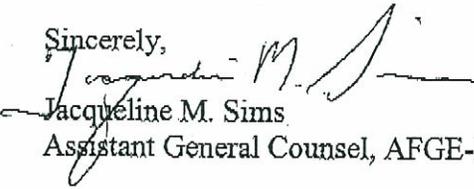
AFGE points out that at no time following Mr. Williams April 2007 response or in or after Mr. Hutter's July 2007 response did VA file a timely grievance under Article 42 grieving as you have noted "AFGE-NVAC's refusal to bargain over the impact and implementation aspects of USA Staffing as a mid-term item in accordance with Article 44, Section 2 of the VA-AFGE Master Agreement.

Moreover, as noted in the National Grievance, Mr. Hutter (General Counsel) sent a letter in January 2008 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.

However, again AFGE notes that, at no time following Mr. Hutter's January 2008 to Ms Lee or following later discussions has VA filed a timely grievance under Article 42, grieving "AFGE-NVAC's refusal to bargain over the impact and implementation aspects of USA Staffing as a mid-term item in accordance with Article 44, Section 2 of the VA-AFGE Master Agreement. In fact, VA also did not pursue a remedy for its assertions with AFGE or any outside entity. Indeed, it was not until after AFGE filed its June 27, 2008 National Grievance, that VA decided to "grieve" this issue through its "Counter-Grievance". Thus, in this regard, assuming *arguendo* that a procedure for filing a "Counter-Grievance" had been incorporated in the Master Agreement under Article 42, Section 11 or elsewhere in the Master Agreement, the "Counter-Grievance" would still be denied by AFGE as untimely filed.

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