



DEPARTMENT OF VETERANS AFFAIRS
Deputy Assistant Secretary for
OFFICE LABOR-MANAGEMENT RELATIONS
Washington DC 20420

DEC 19 2012

Robert E. Redding, President
NFFE-IAM DVA Council
1902 13th Avenue North
Moorehead, MN 56560

Dear Mr. Redding:

This is in response to your grievance received on November 21, 2012, alleging management misinterpreted Article 8, § D of the Department of Veterans Affairs (VA)/National Federation of Federal Employees (NFFE) Master Agreement when the Department allegedly rejected NFFE's "proposals as untimely with respect to VHA Directive, the Use of Unlicensed Assistive Personnel," and "failed to properly extend the timeframes for NFFE to respond in accordance with Article 8 § F."

In your grievance you specifically state, "NFFE received a proposal regarding the use of Unlicensed Assistive Personnel on October 2, 2012. Shortly after receiving this proposal, we [NFFE] requested to bargain per our new Master Agreement Article 8, § D." You further claim that "briefings commenced and on November 10, 2012, NFFE had [its] final briefing with Mr. Edson Morales, Karen Ott (RN), other Agency officials and [its] bargaining team." You allege "Mr. Morales (LMR) requested all NFFE counter proposals, being frustrated at the slow pace of scheduling the briefings. We were asked to have our counterproposals in by Wednesday, November 14, 2012." You contend "on November 14, 2012, the NFFE Chief, Link Miles' mother passed and he notified VA that he was unable to send VA our Counter Proposals the 14th. He sent these the 16th."

You indicate that "on November 16, 2012, Mr. Morales (LMR) notified Mr. Miles that despite his mother's passing, the Department of Veterans Affairs was moving forward with its plans to implement the UAP Proposal." You claim, "Mr. Morales' cherry picked choice responses where NFFE Team members were unable to make briefing calls; leaving out the times when he or his VA Managers were unable to make calls. Mr. Morales' assertion was that the NFFE contract provides for a strict 30 day deadline for the Agency to receive Counterproposals."

You claim, "briefings have always been considered as a seeking of data (information) and serve as a mechanism for the Union to better understand the Proposal (subject matter) and proffer reasonable counterproposals." You state, "NFFE requested to bargain within 15 work days in accordance with Article 8, § D and sought Data (briefings) in accordance with Article 8 § F." You allege, we concluded briefings, receiving all relevant data on November 10, 2012. Therefore, NFFE has 30 days from November 10, 2012 to submit counter

proposals, or December 10, 2012. You allege, "the fact we couldn't meet a unilateral deadline imposed by VA LMR is inconsequential to our request to negotiate and timeframes for submitting proposals." As a remedy, you request "VA returns to the bargaining table, considers our well-developed counterproposals as timely submitted, and participate in the creation of a Memorandum of Understanding to which we are entitled under Chapter 71, 5 USC and our CBA."

The Agency responds as follows to your grievance:

On October 2, 2012, you were provided notice with an opportunity to bargain revisions made to the VHA Directive, the Use of Unlicensed Assistive Personnel in Administering Medication affecting your bargaining unit employees' working conditions. The notice specifically states, "if you would like to discuss or a briefing" to contact Mr. Edson Morales no later than October 24, 2012. The notice also states that the proposed implementation date is November 9, 2012.

Six days later, on October 8, 2012, you requested a briefing and to bargain. On October 11, 2012, three days later, Mr. Morales offered a briefing for Tuesday, October 16, 2012 at 9:30 a.m. (ET). That same day, you responded to Mr. Morales stating, "Edson, I'm sending to our team now. Will have answer by cob." Mr. Morales did not hear from you and or your team on that date.

On October 16, 2012, Ms. Sandy Bond, NFFE Midterm Bargaining Team Member sent Mr. Morales an e-mail stating, "Edson, are you the person that is putting together the call today for UAP? Mr. Morales responded stating, "Hi Sandy. On October 11, 2012, I had offered Bob "today" as a date for a briefing. He said he would get back to me by cob that date. I did not hear back from Bob confirming availability and I already have briefings scheduled for today. See attached message." Ms. Bond replied, "OK, I just wanted to make sure that I was not missing the call. Bob is the one that you are working with. Don't want to muddy the waters, just wanted to be able to make the call. Thanks Edson. Talk to you later." Mr. Morales replied "there is no call currently scheduled."

On October 22 2012, Mr. Miles Link e-mailed Mr. Morales stating, "Mr. Morales, it looks like we may have crossed on an earlier date. Can we have a schedule a briefing for NFFE's Team on this?" That same day, Mr. Morales offered a briefing date for Friday, October 26, 2012 at 4:00 p.m. (ET).

On October 24, 2012 you responded, "Edson, Link is at a VISN meeting this Friday. I don't think he will be available as the VISN meeting was already scheduled. Can you provide alternate dates? We are trying to get all bargaining stuff done Wednesdays. I'm attempting to lock the 40 percent official time (only) that we have to a day a week when most of our folks can get free. Are you

available next Wednesday?" That same day, Mr. Morales replied, "Bob, I'll be at the NPC meeting next week. I can probably call-in during our lunch break and that would be Pacific time. Will you be doing the same?" You replied "that's right. Are you in now?" You then called Mr. Morales and confirmed the briefing date for Wednesday, October 31, 2012 at 3:00 p.m. (ET). The following day, Mr. Morales sent out a calendar invite which included Mr. Miles.

On October 31st, as the management team waited on the briefing call, Mr. Miles Link sent Mr. Morales an e-mail stating, "Edson, I am sorry, I did not see this until just now. Since the team was not informed, we are unable to make this time. I understand we can be available next Wednesday at this time." Soon after, Mr. Morales replied, "this is the third attempt to schedule a briefing and very short notice to cancel. The new contract provides specific timeframes by when mid-term bargaining matters are dealt with. Bob had confirmed availability, and I'm currently on the call." You then replied to Mr. Link stating, "Link, can we all dial in to Edson now?" Your team then called-in. It is worth noting that during the briefing call, the subject matter expert (SME) thoroughly discussed the revisions made to the Directive and answered relevant questions. During the call, the union asked how many facilities use UAPs and the SME said she would look into that. The briefing concluded with a mutual understanding that if NFFE wanted to submit proposals, it would submit them by COB, Wednesday, November 7, 2012. You did not dispute submitting the proposals by the aforementioned date nor did you claim the contract gives NFFE more time. Actually, Mr. Morales stated on the call that if NFFE needed more time, he would work with you. Nonetheless, you did not request additional time.

On Friday, November 2, 2012, Mr. Morales forwarded to you the number of facilities using UAPs. In his message to you, he stated, "attached is the data requested during the briefing. As mentioned during the call, if you wish to submit proposals in connection with the changes to the UAP Directive affecting your BUEs, please do so by COB Wednesday, November 7, 2012." Two days later, you replied, "Thanks. What's this?" That same day, Mr. Morales replied, "the information requested in regards to the UAP Directive." You did not dispute having to submit proposals by COB Wednesday, November 7, 2012.

On November 9, 2012, Mr. Link acknowledged the proposal was untimely. He specifically stated "here is NFFE's counter proposal for the UAP proposal. Please accept my apology for being late on this (emphasis added). My mother passed Wednesday afternoon just as we were wrapping this up to send and I was unable to get it out to you."

If as you note in your grievance, the contract provides additional time, why then would Mr. Link apologize for the proposal being late; not dispute having to submit the proposal by COB November 7, 2012, and when Mr. Morales called you to discuss the proposal being untimely Mr. Morales states you acted in an unprofessional and inappropriate manner when you referred to him as "an asshole," threatened to file an unfair labor practice charge, and hung up the phone without notice?

The VA-NFFE Master Agreement, Article 8, Section 2D states "(1) When the Employer proposes changes affecting personnel policies, practices or conditions of employment, the Employer will send the proposals and copies of any material to the NFFE VA Council President and/or designee. The Union has up to fifteen (15) work days to request negotiations. The Union shall have thirty (30) calendar days from the date of receipt of the notice to submit proposals." Section F. states, "Data requests from either party shall automatically extend the time limits equal to the number of days it takes to receive such data. The parties agree that data requests will be prudent and necessary to respond to proposal(s)."

You acknowledge receiving notice on October 2, 2012. On October 8, 2012, you requested to bargain as well as a briefing. Efforts were made to accommodate a briefing, as noted above, which after two previous unsuccessful attempts, took place on October 31, 2012 not on November 10, 2012. During the briefing call NFFE asked Ms. Ott, the SME, if she was aware of the number of facilities using UAPs. The SME responded negatively but stated she could find out. Although not a formal request for data, the information was provided on November 2, 2012. You acknowledged receiving the information on November 4, 2012 and as noted above Mr. Link sent his proposal to Mr. Morales on November 9, 2012 – two days after the agreed upon date to submit proposals.

With respect to your claim that a request for briefing is indistinguishable from a data request as provided in Article 8 § F, such claim is misplaced. It is our understanding that during term negotiations with respect to the current NFFE Master Agreement, the parties spoke about data request. At the time, the Union was concerned if it made a request for documentation that it would receive that documentation in sufficient time to meet deadlines for proposals. For example, if management proposed conducting a national survey the union may request a copy of the survey or request a copy of the contractor's implementation plan. The parties agreed that any request for "documentation" should extend the timelines as management has an obligation to provide that information by statute. The management team also wanted to be sure those requests wouldn't be unnecessary and burdensome in an effort to delay the proposal which is why the last sentence in 8 F was included. There were no discussions about briefings in

Page 5.

connection with data request and extension of time. Data requests are intended for routine requests for information and not briefings.

At this juncture, management is not under any contractual obligations to accept NFFE's proposal in regards to the VHA Directive, the Use of UAPs in Administering Medication. The Department correctly interpreted the contract and continues to assert that the proposal submitted is untimely.

For the reasons stated above, we deny this grievance and any related grievances that may be filed on the same issue. If you have any questions, please contact Mr. Edson Morales at Edson.Morales@va.gov or at (631) 261-4400 extension 2746.

Sincerely,

A handwritten signature in black ink, appearing to read "L. B. Wiggins", written in a cursive style.

Leslie B. Wiggins
Deputy Assistant Secretary
for Labor Management Relations