



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

August 24, 2012

Ibidun Roberts, Esq.  
AFGE/NVAC Attorney  
80 F St. NW  
Attn: General Counsel  
Washington, DC 20001

Dear Ms. Roberts:

This is in response to your grievance dated July 5, 2012, alleging management violated Article 35, Section 17 of the Department of Veterans Affairs (VA)/AFGE Master Agreement at the VA HealthCare System in Minneapolis, MN with respect to "the granting of donor leave for employees who participate in sponsored or endorsed blood donation."

In your grievance you specifically argue that "on or about April 30, 2012 and continuously thereafter, the VA, by and through its representatives and/or agents, issued a HRML which has been interpreted to limit the amount of donor leave that can be approved by supervisors for employees participating as blood donors." You claim that "during a Minneapolis VHA staff meeting, supervisors instructed staff that they must return to work for the remainder of their shift immediately after completing the donor process." You indicate this is contrary to Minneapolis "past-practice of allowing 4 hours of donor leave for blood donors." The Agency responds as follows to your grievance:

A. Local v. National Grievance

The grievance is presented as a "national grievance," but it arises out of a single local VHA facility in Minneapolis, MN. The allegations arise out of a staff meeting that occurred at the Minneapolis VHA staff meeting; the union fails to allege the issues have arisen at any other VA facilities. Although the MCBA does not define "national grievance," the term plainly excludes matters that are strictly local like the one involved here; to conclude otherwise would render the word "national" meaningless. That would not only defy logic, it would conflict with provisions of the MCBA that clearly demonstrate the intent to distinguish local from national matters. See Article 47, Section B, "Proposed changes in personnel policies, practice, or working conditions affecting the interests of one local union shall require notice to the President of that local. Proposed changes in personnel policies, practices, or working conditions affecting the interests of two or more local unions within a facility shall require notice to a party designated by the NVAC President with a copy to the affected local unions." In a telephone conversation on August 3, 2012, Mr. Edson Morales, VA LMR, Labor Relations Specialist explained this issue to you, however, the union failed to amend the

Page 2.

Ibidun Roberts, Esq.

grievance to include another facility. Because this is not a national matter, it should not have been filed as a national grievance. For this reason, the grievance is denied. However, assuming *arguendo* that the grievance was properly filed, there are additional concerns that need to be addressed.

#### B. Supervisory Discretion and Past Practice

After receiving the Flyer (AFGE Grievance Attachment A) concerning the granting of Authorized Absence for Blood Donor Programs, the facility Human Resources sent an announcement to supervisors reminding them of their authority to approve “up to” four hours. The supervisory announcement was intended to ensure compliance with policy and the express language of Article 35, Section 17 which states, “Donor leave will be granted consistent with government-wide rules and regulations” and, “employees will be granted up to four hours of excused absence to donate blood to a Department sponsored or endorsed blood program” (emphasis added). As described in the Flyer, VA Handbook 5011, Part III, Chapter 2, paragraph 12e and Part III, Chapter 3, paragraph 9e provides the authority to grant authorized absence for any period of the day needed for traveling to/from the blood donation site, the actual blood donation, and rest and recuperation when participating in uncompensated blood donor programs. The VA regulations do not authorize absence for any time other than specifically provided, as aforementioned, i.e., no additional authorized absence is allowed to “thank” the employee who donated blood. Such authorization is contrary to VA Handbook 5011 and VA Handbook 5017, Employee Recognition and Awards. Time off awards may not be granted to employees for donating blood.

The Flyer and VA Handbook language does not mean that supervisors must approve an automatic four hours excused absence; however, it does provide supervisors, *discretion* to provide up to four hours excused absence. For instance, an employee may need four hours of excused absence for travel and rest and recuperation, and in such case, the supervisor is able to excuse the employee’s absence for four hours. Nowhere in VA policy, or in the Master Agreement is the supervisor required or allowed to give an employee the entire four hour period without a particularized need by the employee for the blood donation.

In Department of Health, Education and Welfare, Region I, Chicago, Illinois, 4 FLRA 736 (1980), essential factors in finding that a past practice exists include that the practice must, (a) be known to management; (b) responsible management must knowingly acquiesce; and (c) such practice must continue for some significant period of time. A past-practice cannot develop at the local level which is inconsistent with the

Page 3.

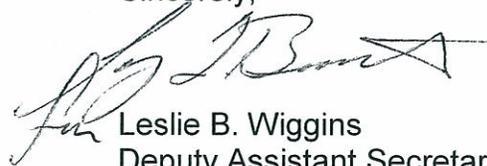
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Master Agreement and VA policy. Those few supervisors at the Minneapolis VA HealthCare System who may have approved an automatic four hours cannot agree to or acquiesce in a past-practice that is inconsistent with the Department level collective bargaining agreement and VA policy. Those few supervisors do not constitute responsible management officials with authority to change a provision of the collective bargaining agreement by practice, when that provision was agreed to at a higher level of the agency. The actions of some supervisors at one local facility does not make a past practice for the entire facility, and certainly not for the entire Department. (See Internal Revenue Service, Louisville District, 91 FLRR 1-1400, 42 FLRA 137 (FLRA 1991) and VA Medical Center, Memphis, Tenn., 91 FLRR 1-1441, 42 FLRA 712 (FLRA 1991) in which the Authority found that to establish a change in practice, there must be evidence of the practice "before and after" a given time. Evidence from a few employees involving isolated incidents, without evidence showing how those incidents reflect either present practice or a departure from a defined past practice, likely will not make out a prima facie case of a ULP.)

Lastly, as discussed above, such practice is against VA policy and the Master Agreement. The FLRA has held that there can be no binding past practice that requires the performance of an unlawful act. Federal Aviation Administration, 104 LRP 29004, 60 FLRA 20 (FLRA 2004). As the Authority has held in case law, if management intervenes to stop the prohibited practice, like the unauthorized granting of excused absences in this case, it has not changed past practice but reaffirmed prior practice, and has not committed a ULP. Dept. of Treasury, IRS, Cleveland and NTEU Chapter 37, 6 FLRA 240 , 248-49 (1981) (ALJ Decision).

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 Christina J. Knott at (202) 697-2232 or [Christina.Knott@va.gov](mailto:Christina.Knott@va.gov) or Edson Morales at [edson.morales@va.gov](mailto:edson.morales@va.gov) or (631) 261-4400 extension 2746.

Sincerely,



Leslie B. Wiggins  
Deputy Assistant Secretary  
For Labor Management Relations