**Unfair Labor Practice Position Statement**

*Note: Responding to an Unfair Labor Practice Charge is a process governed by the Federal Labor Relations Authority. It is a best practice to first discuss the case with the FLRA attorney assigned to investigate to find out if there is specific information they would like to see included in the position statement.*

*It is recommended that HR consult with local District Counsel representatives as appropriate throughout the unfair labor practice process.*

*A sample position statement is provided to further assist you in responding to a ULP. That sample begins on page three of this template.*

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| ***Suggested format:*** | ***Guidance:*** |
| To: [*Name of FLRA Attorney*], [*Position Title*], [*FLRA Regional Office Name*]  From: [*Your name*], [*Your Position Title*], [*Your Office*] |  |
| Subject: Unfair Labor Practice Charge, Case No. [*case number*], Position Statement |  |
| 1. Please accept this as the Agency’s Position Statement regarding Unfair Labor Practice (ULP) Charge, Case No. [*case number*], filed on [*date*]. I have reviewed the allegations in the charge, and the Agency’s position is outlined below. Additionally, supporting documentation in the form of exhibits are attached. |  |
| 1. **Summary of Charges**   [*Summarize the charges brought against the agency.*] | *Best practice: If the charge and allegations are unclear, discuss with the FLRA attorney to narrow the scope.* |
| 1. **Summary of Facts**   [*Thorough discussion of the event or incident that resulted in the ULP charge.*] | *Very detailed telling of the story from management’s perspective. Include details such as names, dates, times, locations, and direct quotes whenever possible. If there is documentation supporting a fact, include it as an exhibit and cite that exhibit number in this paragraph. Consider creating a detailed timeline and including it as an exhibit.* |
| 1. **Allegation: [*allegation #1*]**   [*Response to first allegation made by the union.*] | *Respond to whether there is merit in the allegation. Cite relevant provisions of the Master Agreement or other negotiated agreements. Reference case law when appropriate.*  *Include separate paragraphs for each allegation contained in the charge.* |
| 1. Thank you for your consideration of this position statement and your assistance in this matter. The Department of Veterans Affairs is committed to both partnering with the Union and complying with Statutory requirements as we work to ensure fulfillment of our mission. |  |
| 1. Please direct any questions or concerns to may have to me at [*your phone number*] or [*your email address*]. |  |
| *Signature of HR Specialist* |  |

**Sample Position Statement**

June 15, 2020

Bob Barker

Regional Attorney

Washington Regional Office

Federal Labor Relations Authority

1400 K Street NW, Suite 221

Washington, DC 20424-0001

RE: Case No. WA-CA-20-1234

Dear Mr. Barker:

Please accept this as the Agency’s Position Statement regarding Unfair Labor Practice (ULP) Charge, Case No. WA-CA-20-1234, filed on August 1, 2020. I have reviewed the allegations in the charge, and the Agency’s position is outlined below. Additionally, supporting documentation in the form of exhibits are attached.

**Summary of Charges**

The charge alleges that the Department violated subsections 7116(a)(5) of the Federal Labor Management Relations Statute (Statute). According to the charge the VA violated these subsections by “implementing” Medical Center Memorandum (MCM) 1234, *Dress Code Policy*, “before reaching impasse or agreement with the Union.”

**Summary of Facts**

The new MCM [Exhibit 1 – MCM 1234] establishes policy for the Anytown VA Medical Center (VAMC) regarding a dress code for its employees. The MCM requires employees to adhere to a standard of dress and appearance that enhances the VAMC’s reputation and instills in its patients and visitors a sense of confidence and assurance. Compliance with the directive is required for all employees, regardless of position or grade.

Anytown VAMC employs approximately 5,000 employees and treats approximately 300,000 veteran patients per year. The VAMC carefully monitors patient satisfaction, primarily by analyzing the data contained in the annual Strategic Analytics for Improvement and Learning (SAIL) report scorecards. In 2019, Anytown VAMC received a three out of five star rating. [Exhibit 2 – 2019 Report Scorecard] Anecdotal evidence from SAIL survey data reveals a statistically significant number of negative comments related to the dress and appearance of medical center employees. [Exhibit 3 – select narrative comments from patient satisfaction surveys]

On March 1, 2020, VAMC executive leadership met to discuss the previous year’s SAIL scores and begin to develop strategies to raise that score in 2020. Many initiatives were discussed, including the implementation of a dress code policy. [Exhibit 4 – minutes from March 1, 2020 executive leadership meeting]

On April 1, 2020, a draft of MCM 1234, *Dress Code Policy*] was approved by the Medical Center Director, Dr. Alex Trebek. [Exhibit 1 – MCM 1234]

On April 15, 2020, notification was sent to the American Association of Government Workers (AAGW) Local 100, which represents Anytown VAMC’s nearly 3,500 bargaining unit employees. [Exhibit 5 – union notification] The notification included a copy of MCM 1234, the 2019 SAIL report scorecard, and select narrative comments taken from patient satisfaction surveys. In accordance with the ground rules for local bargaining between Anytown VAMC and AAGW Local 100 [Exhibit 6 – Ground Rules MOU], the union was given fourteen calendar days to request a briefing or demand to bargain.

On April 30, 2020, Human Resources Specialist Vanna White notified Mr. Trebek that the deadline for the union to request a briefing or submit a demand to bargain had passed, and management was permitted to implement the new dress code policy. [Exhibit 7 – email: Update on Union Notification].

On May 3, 2020, Dr. Trebek notified AAGW Local 100’s president, Chuck Woolery, that he would be conducting a townhall style meeting with the Anytown VAMC employees to announce the new dress code policy and answer any questions the employees may have. Dr. Trebek informed Mr. Woolery the meeting would be held in the main auditorium at 2:00 pm on May 20, 2020, and invited Mr. Woolery to attend. [Exhibit 8: email – Notice of Formal Discussion]

On May 5, 2020, Mr. Woolery submitted a demand to bargain to Dr. Trebek and Ms. White, requesting bargaining over the dress code policy. [Exhibit 9: email – Demand to Bargain: Dress Code Policy] That same day, Ms. White responded, notifying Mr. Woolery that his deadline to submit a demand to bargain was on April 30, 2020, and his failure to do so constituted a waiver of the union’s right to bargain. [Exhibit 10: email – RE: Demand to Bargain: Dress Code Policy].

On May 20, 2020, Dr. Trebek held a townhall meeting with the employees of the Anytown VAMC, notifying them about the dress code policy, and answering their questions. [Exhibit 11: minutes from the May 20, 2020 townhall meeting]. Later that same day, MCM 1234 was sent via email to all employees in the Anytown VAMC employee mail group. This email also informed the employees the dress code would go into effect on June 1, 2020. [Exhibit 12: email: New Dress Code Policy for Anytown VAMC Employees]

On May 25, 2020, Mr. Woolery filed an Unfair Labor Practice Charge against the Anytown VAMC alleging the agency had refused to consult or negotiate in good faith with a labor organization as required by the Statute. [Exhibit 13: Unfair Labor Practice complaint]

**Allegation: The Department has not refused to consult or negotiate in good faith with a labor organization as required by the Statute.**

While the parties did not negotiate over the implementation of MCM 1234, it was not due to management’s refusal to do so. Rather, management provided the union with appropriate notice prior to making any changes to conditions of employment for bargaining unit employees and offered the union an opportunity to initiate bargaining over the policy. The union declined to do so within the timeframe prescribed by the mutually agreed upon ground rules for local bargaining.

The union’s failure to initiate bargaining in accordance with these ground rules constitutes a clear waiver of their right to bargain. In 58 FLRA No. 166, the Authority held a union waived its right to bargain by failing to respond within the contractually mandated timeframe to an agency’s notice of proposed change. According to the FLRA, a waiver need not be explicit; inaction itself may constitute an implicit waiver.

In providing advance notice of a proposed change and waiting for the mutually agreed upon deadline for submission of a union demand to bargain expire prior to implementing the change, the Anytown VAMC met its statutory bargaining obligations. The union has failed to prove its allegation and management has not violated the Statute.

Thank you for your consideration of this position statement and your assistance in this matter. The Department of Veterans Affairs is committed to both partnering with the Union and complying with Statutory requirements as we work to ensure fulfillment of our mission.

Please direct any questions or concerns to may have to me at (123) 555-4567 or [Vanna.White@va.gov](mailto:Vanna.White@va.gov).

Sincerely yours,

Vanna White

Labor Relations Specialist

Anytown VAMC