

NATIONAL GRIEVANCE

NG-5/31/2013

Date: May 31, 2013

To: Larry Bennett
For the Deputy Assistant Secretary,
Labor – Management Relations
Department of Veterans Affairs (VA)
810 Vermont Avenue, NW
Washington, DC 20420

From: Ami Pendergrass, Attorney, National Veterans Affairs Council (#53) (NVAC), American Federation of Government Employees (AFGE), AFL-CIO

Subject: National Grievance in the matter of the Department of Veterans Affairs, Veterans Benefit Administration's ("VBA") failure to 1) provide notice and opportunity to bargain and its 2) unilateral implementation of changes in working conditions concerning mandatory overtime and two year claims.

STATEMENT OF CHARGES

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) (MCBA), American Federation of Government Employees/National Veterans Affairs Council (Union) is filing this national grievance against you and all other associated VA officials and/or individuals acting as agents on behalf of the VBA for violations as it relates to its failure to 1) provide notice and opportunity to bargain and its 2) unilateral implementation of changes in working conditions concerning mandatory overtime and two year claims.

Specifically, on or about May 15, 2013 and continuously thereafter, the VBA, by and through its representatives and/or agents, has:

- (1) Unilaterally implemented the 2011 MOU on Mandatory Overtime with respect to matters not covered by the MOU to affected Veterans Service Representative (VSR) and Rating VSRs (RVSR) without notice and opportunity to bargain; and
- (2) Unilaterally implemented changes in working conditions, without notice and opportunity to bargain affecting the processing of two-year claims (FAST Letter 20-13-05); mandatory overtime for staffing including but not limited to Decision Review Officers, Quality Review Specialist (QRS), Claims Assistants, and Mail Clerks; creation of the "flex month" policy; and the requirement that all Union Officials, including those on 100% official time to perform mandatory overtime.

In doing so, the VA has violated the following provisions:

- (1) Article 21, Section 1;
- (2) Article 47, Section 2;
- (3) Article 49, Section 4;
- (4) 5 U.S.C. §7106 (b) *et al*;
- (5) 5 U.S.C. § 7116 (a)(1) and (5); and
- (6) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

STATEMENT OF THE CASE:

I. Background

In March 2011, the VBA announced that it would be implementing mandatory overtime for all Veteran Service Representatives (“VSR”) and Rating Veteran Service Representatives (“RVSR”). The proposed change in working conditions would require twenty hours a month of mandatory overtime for all VSR and RVSR, located in compensation and pension, who were with the VBA for more than a year of service and were not the subject of a performance improvement plan. The new change would affect work that was part of the “backlog,” which in practice, included whatever work the VBA regional office assigned to bring production numbers up. Production standards for VSR and RVSRs were counted on mandatory overtime and exceptions to the requirement to work twenty hours a month were to be reviewed on a case by case basis by each VBA regional office.

The parties reached an agreement on June 30, 2011, which covered VSRs and RVSRs doing mandatory overtime work in fiscal year (“FY”) 2011, covering the type of work noted above. In paragraph one of the agreement, the language read that the agreement was effective for FY 2011 and that if the VBA intended on extending mandatory overtime in subsequent years for VSR and RVSRs, performing work to bring production numbers up, it would provide notice to the Union and would agree to adhere to the MOU. The MOU contains no language waiving the rights of the national mid-term bargaining team to negotiation new changes in working conditions concerning mandatory overtime implemented in subsequent years, and the MOU contains explicit language in paragraph eleven, which allows for future local bargaining, in addition to national bargaining on the matter. The VBA, implementing the exact same mandatory overtime conditions in 2012 as noted above for FY 2011, provided notice in February 2012 of its intention to implement mandatory overtime for VSR and RVSRs, and the parties did not engage in further bargaining at that time.

On April 19, 2013, at the end of a week of face-to-face meetings with the national mid-term bargaining team, VBA representatives released a FAST letter concerning the processing of two-

year claims. The Union's chief negotiator, Valorie Reilly, asked for a copy of the FAST Letter but was denied both the letter and any opportunity for further discussion. After the letter was released, the Union put in a demand to bargain for appropriate arrangements. The VBA did not answer the demand until May 16, 2013, when it denied the Union's request to bargain due to its management's right to assign work under 5 U.S.C. §7106(a). (Attachment A).

On May 15, 2013, notice was sent out to all VBA regional offices and centers concerning the implementation of mandatory overtime. (Attachment B) Notice was given to the Union in a briefing on May 15, 2013, **thirty minutes prior to distribution of the notice and implementation**. Unlike the provisions implemented in the mandatory overtime programs of FY 2011 and 2012, the VBA, in FY 2013, implemented a new and different program for mandatory overtime:

1. The FY 2013 plan was designed to work on the two-year claim block of business and special priority claims (FDC, Hardship, Homeless, POW, QS, BDD, IDES, DIC, SI/VSI, and Terminal), which is work different from the work performed in FY 2011 and FY 2012.
2. The FY 2013 plan included mandatory overtime for all positions at the VBA, beyond the positions of RVSR and VSRs. These new positions included are: DROs, QRSs, Claims Assistants, Mail & File Clerks, and GS12/13 supervisors (not covered in this grievance). The new plan included twenty hours for all positions except Claims Assistants, Mail & File Clerks, and Supervisors, who were mandated to perform ten hours a week.
3. The FY 2013 plan introduced a "flex month" plan which allowed for employees to accommodate family, vacation and other extracurricular activities scheduled.
4. The FY 2013 plan included employees in additional departments from the compensation and pension departments.
5. The FY 2013 plan excluded a new set of employees, those attending challenge training that was not contemplated in the 2011 MOU.

An immediate demand to bargain was issued by Union Representative Reilly, advising the VBA of the Union's demand to bargain appropriate arrangements for the new changes in working conditions and reminding the VBA of its failure to respond to the open demand to bargain over the implementation of the FAST Letter concerning two-year claims, which was now part of the work to be performed on mandatory overtime.

On May 16, 2013, Union officials in the Minneapolis, Alaska, Huntington, and Milwaukee VBA offices were notified that all Union officials, including those on 100% official time would be required to work mandatory overtime. This included working as a VSR or RVSR (which would include performance standards to be measured) or in any other position the Union official can be placed in. No notice was provided to the NVAC or to Union Representative Reilly. An email was sent by President Alma Lee to General Allison Hickey, (Undersecretary for Benefits) on or about May 20, 2013, concerning the inclusion of Union officials on mandatory overtime. General Hickey responded by email on May 21, 2013, confirming that the VBA has unilaterally

implemented the requirement that all Union officials, nationwide, work mandatory overtime. (Attachment C).

Additionally, on May 16, 2013, VBA Representative Kevin Nelson, responded to the Union's demand to bargain, stating that the changes in the FY 2013 were covered by the 2011 MOU and that the VBA did not intend to bargain. Mr. Nelson, however, went on to say that the VBA would agree to bargain, post-implementation, on the file clerks and Claim Assistant positions only. (Attachment A).

To date, the VBA has neither met nor bargained over any changes and has moved forward with unilateral implementation on mandatory overtime.

II. Violation

The VBA has violated sections of Articles 21, 47, and 49, 5 U.S.C. §§7106(b) and 7116 (a)(1) and (5) in its failure to provide notice and opportunity to bargain on the above cited changes in working conditions concerning mandatory overtime. The VBA has engaged in unilateral implementation of policies that affect major changes in working conditions and has refused, with minor exception, to bargain at all on a number of major changes in working conditions. The VBA's insistence that the 2011 MOU, an MOU that covers different work and, with little exception, completely different employees and departments, covers all obligations to bargain on the matters presented is baseless. On those matters that the VBA has agreed to bargain, it has only agreed to as a matter of post-implementation bargaining.

III. Remedy Requested

The Union asks that to remedy the above situation, the VA agrees to the following:

- (1) Immediately cease and desist implementation of mandatory overtime;
- (2) Restore all employees affected by the unilateral implementation to the status quo, prior to implementation
- (3) Immediately schedule, meet and confer with the Union concerning its bargaining obligations and work with the Union until completion of its bargaining obligations; and
- (4) To agree to any and all other remedies appropriate in this matter.

IV. Time Frame and Contact

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) 306-3664.

Ami Pendergrass
Attorney
AFGE/NVAC

Cc: Alma L. Lee, President, AFGE/NVAC
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC