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NATIONAL GRIEVANCE
NG-04/13/2011

Date: February 15, 2013

To: Leslie Wiggins
Deputy Assistant Secretary,
Labor – Management Relations
Department of Veterans Affairs
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 (VA) failure to comply with 5 U.S.C. § 7131 (d) and Article 48, Sections 1,2, and 10 of the Master Agreement concerning the assignment of and negotiation of official time.

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 Department of Veterans Affairs (“VA”) officials and/or individuals acting as agents on behalf of the VA for violations as it relates to its failure to comply with 5 U.S.C. §7131(d) and Article 48, Sections 2 and 10 of the Master Agreement concerning assignment and negotiations of official time.

Specifically, on or about January 18, 2013 and February 01, 2013 and continuously thereafter, the VA, by and through its representatives and/or agents, has:

- (1) Denied the Union its right to negotiate official time under 5 U.S.C. §7131(d) by treating Article 48, Section 10 as an express waiver of the Union’s statutory right in violation of the Statute and Article 48, Section 1(B); and
- (2) Required that the Union count national officer time, which is granted separately as a matter of contract in Article 48, Section 2, against Local allocated time, in violation of Article 48, Sections 1, 2 and 10.

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

- (1) 5 U.S.C. §7131(d)
- (2) Article 48, *et al*, specifically Sections 1, 2, and 10; and

- (3) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

STATEMENT OF THE CASE:

I. Background

5 U.S.C. §7131 provides statutory authority for exclusive representatives to utilize official time for purposes of representation. Sections (a) through (c) of the act mandate statutory official time as a right under law for matters such as negotiation or attendance at an FLRA proceeding. Section (d) of the statute allows the parties to reach additional agreements for the use of official time and reads:

- (d) Except as provided in the preceding subsections of this section –
- (1) any employee representing an exclusive representative or
 - (2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,
- Shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

The parties recognized the authority to negotiate official time under 5 U.S.C. §7131(d) in Section 1(B) of Article 48 of the MCBA, which reads:

As provided in 5 U.S.C. §7131, official time shall be granted as specified in law and in any additional amount the Department and the Union agree to be reasonable, necessary, and in the public interest. Official time shall be granted for activities as specified in the law and in amounts specified by this Agreement or otherwise negotiated. . . .

Article 48, Sections 2 and 10 represent official time negotiated by the parties as part of the Agreement, which includes the granting of designated official time to national officers and national appointed representatives (Article 48, Section 2) and the potential use of allocated official time, determined under the 4.25 formula, where previously negotiated official time at Local facilities was for an amount that is less than under the 4.25 formula.

II. Violation

On January 14, 2013, VA Representative Ryan Fulcher released national guidance to the VA facilities concerning the allowance for Official Time for attendance at the 2013 Legislative Conference, held on February 11, 2013 to February 14, 2013 in Washington, DC. The guidance was based on joint negotiations between Mr. Fulcher and NVAC Attorney Ami Pendergrass concerning attendance at the Conference. As part of that national guidance, Mr. Fulcher stated that “(o)fficial time granted for travel or attendance at the event should be deducted from your Local’s official time allocation.” The matter of allocated time was not discussed between Mr. Fulcher and Ms. Pendergrass. A call was mutually scheduled and held between Mr Fulcher and

Ms. Pendergrass on January 18, 2013 to discuss the statement. Mr. Fulcher stated that the VA's position is that the Union is only entitled to official time under the allocated time provision of Article 48, Section 10 and therefore, may not exercise its right to negotiate any further use of official time under 5 U.S.C. §7131(d).

On February 01, 2013, Third Executive Vice President, Bill Wetmore, received notification from VA Representative Don Stephen concerning the granting of official time for attendance at the NVAC Planning Conference in San Diego, California, the week of February 18, 2013. Again, the VA stated that "official time granted for travel and attendance at the event should be deducted from your Local's official time allocation." However, the majority of the attendees at the conference in San Diego are national officers or appointed national representatives whose official time is granted via Article 48, Section 2 and their official time is separate from any Local official time allocated under Article 48, Section 10.

As is stated in the language of Article 48, Section 1(B), the parties contemplated that 5 U.S.C. §7131(d) provided a basis for negotiating official time in amounts that are reasonable, necessary, and in the public interest. However, on the face of the language of Section 1(B) the parties also contemplated that this negotiation may be captured by "amounts specified by this Agreement **or otherwise negotiated.**" Nowhere in the language of Article 48, specifically in Sections 2 or 10, does it explicitly waive the Union's right to exercise its ability to negotiate additional time under the Statute, where appropriate, nor does past practice support the VA's understanding that the allocated time, as defined in Article 48, Section 10, serves as a complete limitation on the parties ability to negotiate for additional official time, where appropriate.

III. Remedy Requested

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

- (1) To fully comply with 5 U.S.C. §7131(d) and Article 48;
- (2) To make whole any individual who was not properly granted official time as a result of this violation through restoration of annual leave;
- (3) To make whole any Local whose allocated time was improperly recorded and counted against a local's official time allocation due to this violation; 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