

NATIONAL GRIEVANCE
NG-5/22/13

Date: May 22, 2013

To: Leslie Wiggins
Deputy Assistant Secretary,
Labor – Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

From: Ibidun Roberts, 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 Article 36, Section 3 concerning emergency payment to employees for Department errors.

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 Article 36, Section 3 concerning emergency payment to employees for Department errors.

On an ongoing and continuing basis, the VA, by and through its representatives and/or agents, has failed to issue emergency payment to employees within three working days following the date the payment should have been received due to a Department error.

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

- (1) Section 3, Article 36 of the MCBA;
- (2) 5 U.S.C. §7116(a)(5);
- (3) 29 U.S.C. § 201 et seq.; and
- (4) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

STATEMENT OF THE CASE:

I. Background

Under the prior MCBA (1997), the VA was required to issue emergency payments "not later than the Friday following the payday on which the salary payment was not received by the employee". The emergency payment included "payment from petty cash, duplicate salary payment, partial payment, etc., to the extent authorized". On September 13, 2009, the VA completed conversion to Defense Finance and Accounting Service ("DFAS") for its payroll responsibilities. Although the language regarding emergency payments changed in the MCBA executed in March 2011, it did not eliminate the VA's contractual requirement to issue emergency payments. In fact, the change in language shortened the time for the VA to issue the emergency payment - now, "not later than three working days" - and contains no limitations for its contracting agent, DFAS.

However, a bargaining unit employee at the Beckley VA Medical Center did not receive pay on April 26, 2013 because the not-to-exceed ("NTE") code entered by Human Resources ("HR") on April 2, 2013 "did not flow through to DFAS". From April 8, 2013, Brian Edens, Human Resources Specialist, has stated that HR has contacted VA Central Office, VISN payroll, and DFAS to correct the error. The Management officials stated that they could not issue an emergency check to the employee because all payment is completed by DFAS. The employee did not receive an emergency check by Wednesday, May 1, 2013, which was the third working day.

Another example is a bargaining unit employee at the Appeals Management Center, in Washington, DC, did not receive pay for the entire pay period on August 17, 2012, when the pay should only have been reduced by 40 hours. The employee did not receive the corrected pay until August 31, 2012.

We have other anecdotal evidence of employees failing to receive timely pay due to Department error and then the station fails to issue an emergency payment within three working days, citing payroll contracting with DFAS.

II. Violation

The VA is improperly failing to issue emergency payments as required under Section 3 of Article 36 of the MCBA.

In addition, the VA agreed to a provision in the 2011 MCBA, in which it knew it would not comply or should have known it could not comply; therefore, the VA illegally bargained in bad faith.

III. Remedy Requested

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

- (1) To agree to cease and desist this violation;
- (2) To agree to issue a joint statement that stations are to issue emergency payments in accordance with the MCBA;
- (3) To agree to issue a payment of liquidated damages equal to the amount of the untimely payment to employees affected by this violation since the execution of the 2011 agreement, within 30 days of settlement of this grievance or arbitration decision; and,
- (4) To agree to any and all other remedies appropriate in this matter, including, but not limited to, attorney's fees.

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) 480-0064.



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