

FAX COVER SHEET

TO	LMR Leslie Wiggins, DAS
COMPANY	Department of Veterans Affairs
FAX NUMBER	12024614075
FROM	Ibidun Roberts
DATE	2012-12-24 19:42:35 GMT
RE	National Grievance

COVER MESSAGE

Please find attached a national grievance concerning holiday pay for 72/80 RNs. Thank you.

Ibidun

NATIONAL GRIEVANCE

NG-12/24/12

Date: December 24, 2012

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 the March 2008 Memorandum of Understanding concerning holiday compensation for Registered Nurses on a 72/80 work schedule.

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 the March 2008 Memorandum of Understanding (MOU) concerning holiday compensation for Registered Nurses (RN) on a 72/80 work schedule.

Specifically, on an ongoing and continuous basis, the VA, by and through its representatives and/or agents, has:

- (1) Unilaterally changed the practice of paying holiday pay to 72/80 RNs for work on a holiday or day designated as a holiday, as full-time employees are entitled.
- (2) Unilaterally changed the practice of paying regular pay to 72/80 RNs for a holiday or day designated as a holiday when not scheduled to work, as full-time employees are entitled.
- (3) Failed to bargain with the Union on the change in working conditions.

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

- (1) Paragraph 9 of the March 2008 MOU;
- (2) Sections (a)(1) and (5) of 5 U.S.C. §7116; and,

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

STATEMENT OF THE CASE:

I. Background

In March 2008, the parties entered into an agreement implementing alternate work schedules (AWS) for RNs. One type of AWS was the "36/40" work schedule where a nurse would work 36 hours within a 7-day period, normally three 12-hour days, but was paid for 40 hours of work. The agreement included the provision that "These employees will be considered full time with all the rights of a full time employee . . ." (Attachment A). The Caregiver Act, signed by President Obama on May 10, 2010, changed all "36/40" references to "72/80" and adjusted its terms accordingly, i.e. six 12-hour days within a 14-day period. The Caregiver Act did not change the manner of holiday compensation in any manner relevant here.

When a holiday falls on a weekend day, full-time employees observe the holiday on a regular duty day. Specifically, if the holiday falls on a Sunday, it is observed on Monday and if on a Saturday, it is observed on Friday. Similarly, for a full-time employee who regularly has two non-duty days other than the weekend days, when a holiday falls on a non-duty day, they observe the holiday on a regular duty day. Demonstratively, a full-time employee is normally not scheduled to work on Mondays and Thursdays; if the holiday falls on Monday, this employee observes it on Tuesday and if on a Thursday, this employee observes it on Wednesday. If the full-time employee works on the holiday or day designated as a holiday, they are entitled to holiday pay. If they do not work on the holiday or day designated as a holiday, they are entitled to regular pay for that day.

There are no regulations addressing how to identify holidays or designation of holidays for employees with four (4) days off within a work week. However, since this work schedule was implemented, the 72/80 RNs received holiday pay when they worked the holiday or day designated as a holiday, according to the normal Saturday/Sunday rules. If they did not work on the holiday or day designated as a holiday, they received regular pay for the day. Now, the 72/80 RNs are only eligible for holiday pay when they work the actual holiday. Unlike the other full-time employees, they are not eligible for holiday pay for work on the day designated as a holiday. Also, unlike the full-time employees, they do not receive their regular pay unless they work on the holiday or day designated as a holiday.

The Union has identified this issue in Indianapolis, IN and Tuscon, AZ.

II. Violations

The change of requiring work only on the actual holiday for holiday pay unlawfully and unilaterally changed a past practice that required holiday pay for work on the holiday or day designated as the holiday.

The change also fails to treat the 72/80 RNs as full-time employees as agreed in the March 2008 MOU, including where full-time employees are entitled to regular pay for a holiday or day designated as a holiday when they are not scheduled for work.

III. Remedy Requested

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

- (1) To agree to continue the manner of holiday compensation for 72/80 RNs consistent with past practice;
- (2) To agree to make whole any 72/80 RNs affected by the Agency's unilateral action; and
- (3) 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) 480-0064.



Ibidun Roberts
Attorney
AFGE/NVAC

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

Attachment A

MEMORANDUM OF UNDERSTANDING

The following constitutes an agreement between the Department of Veterans Affairs (VA), Veterans Health Administration (VHA) and the American Federation of Government Employees (AFGE), AFL-CIO, and National Veterans Affairs Council # 53 (NVAC) concerning implementation of VHA Alternate Work Schedules (AWS) for Registered Nurses - VA Handbook 5011.

All the provisions of this Memorandum of Understanding must be interpreted in accordance with 38 USC 7422.

PART A: ALTERNATE WORK SCHEDULES FOR RNS

1. The parties understand that Section 4 of Public Law 108-445, codified at 38 U.S.C. § 7456A, which authorized AWS as set forth in VA Handbook 5011, applies to registered nurses appointed under Chapter 74 of Title 38, which includes Certified Registered Nurse Anesthetists and Advanced Practice Nurses.
2. The parties understand that 38 U.S.C. § 7456A authorizes the VA Secretary to establish AWS where necessary to obtain or retain the services of registered nurses at a VA health care facility.
3. All registered nurses will be trained regarding the procedures set forth in VA Handbook 5011, Part II, Chapter 3, paragraph 8h for requesting AWS. Training slides and guidance relating to these procedures are available on the Office of Human Resources Management's Worklife website at <http://vaww1.va.gov/ohrm/Worklife/Leaves/AWSRN.ppt> and <http://vaww1.va.gov/ohrm/Worklife/DutyHours/AWSRN.doc>.
4. Management at the facility level will solicit and consider the local union's input regarding criteria subject to or consistent with 38 U.S.C. 7422 that may be used to implement AWS for RNs, noting potential areas to be targeted.
5. RNs will be notified of approvals and denials of AWS using VA Form 0870a, in accordance with VA Handbook 5011, Part II, Chapter 3, paragraph 8h and Appendix D thereto. Copies of the completed VA Form 0870a will be provided to the RN and, upon request, all completed VA Form 0870a forms will be forwarded to the local union representative.
6. If management at a particular facility determines that an established AWS for registered nurses should be permanently terminated on a unit-wide or facility-wide basis, based on a finding of adverse impact under VA Handbook 5011, Part II, Chapter 3, paragraph 6.e. (6), management will notify the local union and any affected nurse. Where patient care needs permit, such notice will be provided at

least fourteen (14) days prior to effecting the termination of AWS and management will explain the reasons for the termination to the local union. If a local union requests to bargain over the termination of an established AWS and submits one or more proposals that do(es) not conflict with 38 USC 7422, 38 USC 7456A, or another applicable law, rule, or regulation, negotiations will be conducted in accordance with Article 44 of the VA/AFGE Master Agreement.

7. Procedures by which employees may request to terminate or change their participation in AWS shall be as stated in the Master Agreement, Article 20, Section 2.C.2.d.

8. An RN's AWS will not be terminated from the AWS unreasonably or arbitrarily. If the union feels that the termination of a nurse's AWS was for unjust cause, the decision can be grieved utilizing the negotiated grievance procedure unless the termination concerns issues of professional conduct or competence within the meaning of 38 U.S.C. § 7422, as determined by the Under Secretary of Health.

9. In accordance with 38 U.S.C. §7456A(1)(A), a nurse working a 36/40 work schedule will work thirty-six (36) hours in a seven (7) day period but will be paid for forty (40) hours of work. These employees will be considered full-time with all the rights of a full time employee, including completion of the probationary period after two (2) years under the AWS and appeal rights. For information purposes only, these nurses will be paid premium pay in accordance with 38 U.S.C. § 7456A (b) (2) (C) and/or 38 U.S.C. § 7456A(c), as applicable.

10. When terminating an RN's AWS for unsatisfactory performance, the supervisor will notify the RN of the performance concerns and the termination of AWS in writing. If management determines that the RN's performance improves during a performance improvement period as set forth in VA Handbook 5013, Part II, paragraph 9.(s)(2), management may place the RN back on the AWS if the schedule is still available, or if not, the RN may re-apply and may be reconsidered for AWS at a later date.

PART B: LIMITATIONS ON RNS' WORK HOURS

1. For information purposes only, in accordance with Public Law 108-445, Section 4.b., and VA Handbook 5011, Part II, Chapter 3, paragraph 6 i, nurses will not provide direct patient care in excess of 12 consecutive hours, except in the case of nurses providing emergency care.

2. VHA will provide AFGE-NVAC with a copy of the annual certification to Congress required by Public Law 108-445, Section 4.b. (2).

- 3. Management will consider an RN's request to report to work without having twelve (12) hours off-duty between work tours.
- 4. When determining whether to mandate any nurse to work in a direct patient care setting in excess of twelve (12) consecutive hours in an emergency, local management may consider other resources including nurse managers, supervisors, unscheduled tours, call backs and voluntary overtime. Voluntary overtime exceeding 12 hours is overtime performed by nurses who are qualified and volunteer to work over twelve (12) hours. Management will endeavor to rotate mandatory overtime fairly and equitably.
- 5. If a nurse who has been mandated to work overtime in excess of (12) twelve consecutive hours feels unsafe to deliver care to patients, the RN should discuss his or her concerns with his or her supervisor in accordance with local procedures.
- 6. A nurse may work more than 60 hours in a seven (7) day period if the needs of the agency support this.
- 7. The appropriate management official shall provide a copy of this agreement to the local union president, upon receipt.

Barbara M. Fisher

 For the Department (VHA)
 3/31/08

 Date

Jan M. Mygaard

 For the National VA Council # 53
 3/24/08

 Date