



**NATIONAL VETERANS  
AFFAIRS COUNCIL**  
American Federation of Government Employees  
AFFILIATED WITH THE AFL-CIO

December 6, 2011

**SENT VIA ELECTRONIC AND U.S. MAIL**

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

**RE: National Grievance 12/6/2011, Article 48, Section 10**

Dear Ms. Wiggins,

Please find attached the National Grievance 12/6/2011 concerning failure to comply with Article 48, Section 10 concerning Official Time.

If you have any additional questions or concerns, please contact me at (202) 306-3664.

Sincerely,

Ami M. Pendergrass  
Staff Attorney  
AFGE/NVAC

Cc: Alma Lee, William Wetmore



12/6/11  
LMR

NATIONAL GRIEVANCE  
NG-12/6/2011

**Date:** December 6, 2011

**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 Article 48, Section 10 concerning 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 Article 48, Section 10 of the MCBA.

Specifically, on or about November 28, 2011 and continuously thereafter, the VA, by and through its representatives and/or agents, has:

- (1) Failed and continues to fail to comply with the language found in Article 48, Section 10, Paragraph 1, which reads, “Every local union will receive an allotment of hours equal to 4.25 hours per year for each bargaining unit position represented by that local union.”; and
- (2) Failed and continues to fail to follow the language found in Article 48, Section 10, Paragraph 1, which reads, “Where a local represents employees at a CBOC, Consolidated Mail Out Pharmacy (CMOP), clinic, service center, or successor, at a duty station greater than 50 miles from the facility, that local union will be allotted 25% official time at that duty station”.

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

- (1) Article 48 *et al*, specifically Article 48, Section 10, Paragraph 1; and
- (2) Any and all other relevant articles, laws, regulations, customs and past practices not herein specified.

### STATEMENT OF THE CASE:

#### **I. Background**

On October 4, 2011, the Union's attorney, Ami Pendergrass, forwarded to VA Labor Management Relations Representative, Denise Biaggi-Ayer, a current proposed memorandum of clarification<sup>1</sup> concerning the language found in Article 48, Section 10, Paragraph 1, which reads:

Every local union will receive an allotment of hours equal to 4.25 hours per year for each bargaining unit position represented by that local union. Each VHA and VBA local union is entitled to a minimum of 50% official time. Each NCA local union is entitled to a minimum of 25% official time. Where a local represents employees at a CBOC, Consolidated Mail Out Pharmacy (CMOP), clinic, service center, or successor, at a duty station greater than 50 miles from the facility, that local union will be allotted 25% official time at that duty station.

On November, 28, 2011, Ms. Biaggi-Ayer responded to the Union with a FAQ sheet, which provided guidance to HR representatives on Article 48, Section 10. (See Attachment A). Included in the FAQ sheet was the following guidance:

1. For purposes of completing the 4.25 calculation, VA representatives are advised to use "full time employees equivalents (FTEE)" instead of "bargaining unit positions." (Paragraph one); and
2. In the case where the local union represents a CBOC, Consolidated Mail Out Pharmacy (CMOP), clinic, service center or successor, or a duty station greater than 50 miles from the facility," the local union:
  - a. Is entitled to the 25% time only if a local union representative is stationed at the remote facility;
  - b. If the 25% time is granted, the local union is not allowed to include the employees located at the remote facility as part of the bargaining unit positions to be used in determining the 4.25 calculation;

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<sup>1</sup> The parties have attempted to reach a memorandum of clarification on this matter since May of 2011.

- c. If the remote facility **does not** have a local union representative allocated at the station, the 25% time is not granted and those employees are included in the overall positions for 4.25 calculation purposes. If a union official is subsequently allocated, the positions must then be removed from the 4.25 calculation; and
- d. The Union must choose between 1) the 4.25 calculation; or 2) 25% allocation.

On November 28, 2011, the Union's Third Executive Vice President, Bill Wetmore, was advised by a representative in VA Central Office human resources that she and others in the field had just received the above FAQ sheet from VA Labor Management Relations.

## **II. Violation**

The above-cited references to the FAQ sheet distributed on November 28, 2011 to VA representatives in the field are in violation of the plain language of Article 48, Section 10, Paragraph 1.

## **III. Remedy Requested**

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

- (1) To agree to immediately cease and desist use of the incorrect FAQ sheet;
- (2) To agree to resume negotiations on a joint memorandum of clarification within 60 days of this grievance;
- (3) To agree to not issue any guidance to the field until there is mutual agreement on that guidance;
- (4) To agree to and jointly draft guidance to the field concerning the meaning and application of Article 48, Section 10; and
- (5) 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