



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

September 22, 2011

SENT VIA ELECTRONIC AND PERSONAL DELIVERY

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

RE: National Grievance 9/22/2011, Police Agility Testing

Dear Ms. Wiggins,

Please find attached the National Grievance 9/22/2011 concerning failure to comply with the memorandum of understanding concerning VA Directive 0730 and VA Handbook 0730.

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, Amanda Morrow

Ami Pendergrass Esq. Phone: (202) 306-3664, Fax (614) 340-4656,
E-mail: pendergrassnvac@aol.com, P.O. Box 320430, Alexandria, VA 22320



LMW
SEP 22 2011

NATIONAL GRIEVANCE
NG-09/22/2011

Date: September 22, 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 National Memorandum of Understanding (10/8/2008) concerning VA Directive 0730 and VA Handbook 0730.

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 National Memorandum of Understanding (10/8/2008) concerning VA Directive 0730 and VA Handbook 0730 (“the October 2008 MOU”).

Specifically, on or about August 23, 2011 and continuously thereafter, the VA, by and through its representatives and/or agents, has:

- (1) Implemented the procedure titled, “The Occupational Health Program, Police Physical Fitness and Agility Testing, MCM #2708” which sets standards and procedures for police agility testing in violation of Paragraph 3 of the October 2008 MOU.
- (2) Failed to meet its national bargaining obligations in implementation of a procedure that substantively contradicts the terms of the October 2008 MOU.

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

- (1) The 2008 MOU, specifically paragraph 3;
- (2) Article 47, §4 of the MCBA, and

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

STATEMENT OF THE CASE:

I. Background

On October 8, 2008, the Union and the VA reached agreement concerning the implementation of changes in working conditions imposed by VA Directive 0730 and VA Handbook 0730 affecting VA police staff. Among the multiple issues addressed in bargaining included requirements for officer fitness contemplated in paragraph 3, which reads:

The parties understand incumbent bargaining unit police officers must maintain a level of cardiovascular fitness, which, in the opinion of a qualified health care provider after an appropriate medical examination, is sufficient to permit the officer to safely participate in arduous physical activities. The Department may offer incentives for those officers who exceed their physical requirements. Such incentives are an appropriate subject for local negotiations.

(See Attachment A). The parties agreed that a physician-conducted medical examination was the appropriate measure of physical fitness and left to local negotiations to determine particulars as to incentive programs that the facilities felt necessary to implement to improve the overall health of its officers.

On August 23, 2011, Oscar Williams, Second Executive Vice President and Chairman of the NVAC Mid-Term Bargaining Committee, received from AFGE Local 1042 President, Amanda Morrow, a copy of MCM 2708 (Police Physical Fitness and Agility Testing) provided by Shanon Goodwin, the Administrative Assistant to the Associate Director for Patient Care Services (Nurse Executive) at VA Roseburg Healthcare System ("Roseburg VAMC). (See Attachment B). The new policy contains the introduction of an agility test for officers conducted by a Occupational Health doctor and nurse at Roseburg VAMC. The agility test would introduce mandatory testing requirements to include running, sit-up, and push-up testing.

II. Violation

The Union asserts that introduction of mandatory agility testing as part of physical requirements for VA police officers at the Roseburg VAMC is neither permissible nor contemplated under the terms of the October 2008 MOU. The MOU is specific concerning the requirement for a medical examination by an appropriate position and does not permit, on its face, testing. Local negotiation is contemplated but is only extended to incentive programs. Because the agility testing is mandatory, it does not qualify as an incentive program.

Article 47, §4(A) specifically states:

On all policies and directives or other changes for which the Department meets its bargaining obligation at the national level, appropriate local bargaining shall take place at individual facilities and may include substantive bargaining **that does not conflict** with negotiated national policy and agreements. Upon request, the Union will be briefed on the proposed subject prior to the demand to bargain. (emphasis added, Article 47, §4(A)).

The Union asserts that introduction of this procedure directly interferes with matters bargained for directly and substantively at the national level and, therefore, is barred from local negotiations. Only the national parties preserve the right to change and bargain over matters agreed to nationally.

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 implementation of MCM 2708;
- (2) To agree to bargain over this change in working condition nationally in compliance with Article 47; 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) 306-3664.

Ami Pendergrass
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) and the American Federation of Government Employees, AFL-CIO, National Veterans Affairs Council #53 (NVAC) concerning VA Directive 0730 and VA Handbook 0730.

1. The national parties agree that the implementation of VA Handbook 0730 will allow local negotiations of various subjects, as requested by the local union, consistent with applicable laws and this MOU.
2. When a search of their workplace occurs, the employee has the right to be present and to request a union representative, unless a compelling safety or security issues exists.
3. The parties understand incumbent bargaining unit police officers must maintain a level of cardiovascular fitness, which, in the opinion of a qualified health care provider after an appropriate medical examination, is sufficient to permit the officer to safely participate in arduous physical activities. The Department may offer incentives for those officers who exceed their physical requirements. Such incentives are an appropriate subject for local negotiations.
4. Bargaining unit police officers have the option of having their annual medical examination performed by the Department's physician or employee's physician at the Department's expense ordered or offered in accordance with applicable laws and regulations. An examining health care provider will determine the tests that are necessary as part of the routine annual medical examination in accordance with the SF-78 or appropriate form that identifies the functional requirements and environmental factors.
5. Bargaining unit employees shall be entitled to additional compensation for any activity required by management that exceeds the basic 8 hour workday, the scheduled compressed workday or basic 40 hours workweek, such as for shift briefings and/or weapons issue and/or turn-in that employees are required to complete at the work site prior to and/or alter their normal tour of duty.
6. Bargaining unit police officers placed on light duty shall be given a review to determine if their arrest authority and/or credentials need to be suspended while in a light duty status.
7. The national parties agree to the following change in VA Directive 0730, 2.g. (5), Police Unit Organization and Staffing: "All routine VA police duty shift schedules will have 30 minutes of overlapping patrol coverage built in, which includes 30 minutes non-paid time for a meal period." If a bargaining unit police officer is not able to take

his/her 30-minute meal period, the officer shall be compensated in accordance with applicable laws and regulations.

8. When there is a change in the law governing police uniform allowances, management will notify the union and bargain as appropriate.
9. Upon receipt, the appropriate management official will provide a copy of this MOU to the local union president.

For the Department (VA)

10/8/08

Date

For the National VA Council #53

10-8-08

Date

ATTACHMENT B

**Occupational Health Program
Police Physical Fitness and Agility Testing**

- I. **Purpose:** To define the procedures to be used by Occupational Health Program to safely conduct police physical fitness and agility testing.
- II. **Policy:** Occupational Health will follow all Veterans Health Administration Roseburg (VARHS) policies and procedures in the administration of the police fitness and agility testing. Fitness and agility tests will be conducted according to recognized fitness standards such as the Department of Veterans Affairs Law Enforcement Training Center, North Little Rock, Arkansas.
- III. **Responsibilities:**
 - A. The Occupational Health (OH) Coordinator is responsible for developing and implementing best practice protocols for police medical surveillance, fitness, and agility testing, ensuring the tests are conducted according to protocol. The OH Coordinator is responsible for advising the appropriate stakeholders whenever fitness and agility tests change.
 - B. The VARHS Police Chief will advise the OH Coordinator when there is a change to police academy fitness standards. The Police Chief will inform all police officers they must comply with testing requirements.
 - C. The Human Resources Chief is responsible for all hiring and retention decisions for police officer candidates and status police officers. The Police Chief in cooperation with Human Resources is responsible for the administrative decisions and actions when an officer or candidate fails to comply with the physical fitness and agility testing.
 - D. The Occupational Health (OH) Provider and OH Nurse are responsible for conducting medical examinations prior to the fitness and agility testing, to ensure that the officer or candidate may safely perform these tests. Incumbant officers may choose to have their medical examinations for determining their ability to safely perform the fitness and agility test done by their own private provider at the expense of VARHS per a Memorandum of Understanding between the Department of Veterans Affairs and the American Federation of Government Employees, dated October 8, 2008.
 - E. The OH Provider or VARHS provider designee is responsible for conducting the physical fitness and agility tests according to established protocols. An incumbent officer may choose to have the fitness and agility test done by his/her own provider at the expense of VARHS. Requirements and standards for the fitness and agility tests will be provided to the outside provider by the OH office. OH staff will record the results of the tests in the officer's employee health record.

IV. Procedure:

- A. Incumbant Police Officers will be sent an e-mail reminder of the need for a medical exam and fitness and agility testing six (6) months prior to their anniversary date. The reminder will include the fitness and agility testing standards and requirements. There will be a thirty (30) day window for testing prior to and following the officer's anniversary date to complete all testing requirements for a total window of sixty (60) days. Failure to complete within this 60 day window will be reported to the Chief, Police and Security.
- B. Physical fitness and agility tests will be conducted after the incumbent officer or officer candidate has completed a physical examination and has been medically cleared. The examination will include a history and physical with emphasis on the respiratory, cardiovascular, and musculoskeletal systems, laboratory tests including a chemistry, cardiac panel, CBC and a resting EKG. A complete review of medications taken by the incumbent officer or officer candidate will be done. Medications such as anticoagulants, sedating muscle relaxants, opiates, sedating antihistamines, or any potential mind/consciousness altering substances are not authorized for use by police officers. (Guidelines per the American College of Occupational and Environmental Medicine.)
- C. For incumbent VARHS Police Officers with identified two or more cardiac risk factors and for all officer candidates:
1. Demonstration of the ability to run a medically monitored exercise tolerance test, (ETT) Bruce protocol, achieving a 10 MET energy expenditure.
 2. The medically monitored ETT will be conducted in VARHS' Cardiology Lab. The VARHS provider conducting the ETT is responsible for ensuring the safety of the officer/officer candidate during the performance of the test. The provider may stop the test at any time he or she deems medically necessary. The test is to be stopped if the officer/officer candidate wants to stop. If the test is stopped prior to completion for any reason, the officer/officer candidate will be reexamined by the provider and, as appropriate, referred to the officer/officer candidate's personal provider for further evaluation. All results will be sent to the Occupational Health Office.
 3. Completion of any other fitness tests as recommended by recognized fitness standards such as the Department of Veterans Affairs Law Enforcement Training Center, North Little Rock, Arkansas.
- D. For incumbent VARHS Police Officers who do not meet the medical criteria for needing an ETT:
1. Demonstration of the ability to run a one (1) mile course in a time frame based on age/gender. Points will be given for the completion time based on age/gender. A maximum of 100 points is possible and the minimum passing score is 87 points.

- E. For both incumbent Officers and officer candidates:
1. Demonstration of the ability to do push-ups and sit-ups based on age/gender. Points will be given for the completion of the number of push-ups and sit-ups based on age/gender. The maximum number of possible points in both categories is 100 points. The minimum number of points for push-ups is 75 and for sit-ups is 70.
 2. Completion of any other fitness testing as recommended by recognized fitness standards such as the Department of Veterans Affairs Law Enforcement Training Center, North Little Rock, Arkansas.
- F. Incumbant officers and officer candidates are required to complete the run, push-ups, and sit-ups within a one (1) hour timeframe.
- G. The officer/officer candidate and the Police Chief will be informed of pass/fail results of the physical fitness and agility tests by the OH provider.

V. References:

American College of Occupational and Environmental Medicine, Guidance for the Medical Evaluation of Law Enforcement Officers.

Department of Veterans Affairs Law Enforcement Training Center, North Little Rock, Arkansas.

Memorandum of Understanding between the Department of Veterans Affairs and the American Federation of Government Employees dated October 8, 2008.

VA Handbook 0730, Appendix A: Specific Medical Standards for VA Police Officer Applicants and Incumbants.

VHA Clinical Occupational Health Guidebook. (2010). VHA Center for Engineering and Occupational Safety and Health (CEOSH), St. Louis, Missouri January 2010.

VI. TJC Function: Occupational Health Program

VII. Recission: None

VIII. Follow Up Responsibility: Occupational Health Supervisor

IX. Distribution: Web

Max E. McIntosh, PhD, MBA
Acting Director, VA Roseburg Healthcare System