



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AFL-CIO

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MEMORANDUM: 7m/127779v1

Date: June 13, 2003

TO: Ron Cowles
Associate Deputy for Labor-Management Relations (VA)

FROM: Jacqueline M. Sims *JMS*
Staff Counsel, NVAC-AFGE

SUBJECT: Denial of travel and per diem for union team negotiators who are outside of the local area in situations where there are two or more locals at one facility under one management.

VIOLATIONS: Article 44, Section (4)(B)

1. This is a **National Grievance** filed by the NVAC-AFGE in accordance with Article 42, Section 11, of the Master Agreement between the VA and the American Federation of Government Employees (AFGE) signed March 21, 1997. This **National Grievance** is filed against Bonnie M. Kerber, HR Consultant, VHA HRM Group, Department of Veterans Affairs, San Diego, California, and any other associate VA management staff for violations of the Master Agreement Article 44, section 4(B) **for denying travel and per diem for union team negotiators who are outside of the local area in situations where there are two or more locals at one facility under one management.**
2. AFGE is filing this **National Grievance** in response to the May 14, 2003 letter that was sent from Ms Kerber to Oscar L. Williams, Jr., Chairperson, Mid-Term Bargaining Committee, National VA Council #53, AFGE which stated, in part, that "there will be no travel/perdiem paid for union team negotiators who are outside the GLA HC3."¹

¹ NVAC-AFGE notes that this National Grievance is also in response to the continuous efforts of Ms Kerber to deny travel and per diem for union team negotiators who are outside of the local area in situations where there are two or more locals at one facility under one management.

To Do For All That Which None Can Do For Oneself

3. NVAC-AFGE has a specific interest in making sure that VA and VA management do not unilaterally apply Article 44, Section 4(B) in a manner that is inconsistent with the Master Agreement, past practices and established ground rules.
4. Article 44 Section 4(B) of the VA Master Agreement (1997) provides, in part, that:

Proposed changes in personnel policies, practices, or working conditions affecting the interests of two or more local Unions within a facility shall require notice to a party designated by the NVAC President with a copy to the affected local Unions.
5. On May 14, 2003, in a letter to Oscar L. Williams, Jr., Chairperson, Ms Kerber stated the GLA Health Care System is an integrated facility, under one management. She noted that it was their position that under the Master Agreement, changes in working conditions in situations of two or more local unions at one facility under one management only requires notification to the NVAC President of the designee. Ms Kerber further stated that following that notification, the bargaining is done locally in accordance with Article 44, Section 4. She related that the President of the AFGE National VA Council may name the union bargaining committee, however, the bargaining demand should be addressed to local management and there will be no travel/per diem paid for union team negotiators who are outside the GLA HCS.
6. The Chief Negotiators for intermediate bargaining are the District Representatives from the unions geographic areas in addition to National Representatives inside and outside of the union geographic area. Further, VA management has permitted this past practice in more than one VISN, including paying per diem.

As clearly stated in Article 44, section 3, under intermediate bargaining, "[t]he parties will make every effort to use bargaining team members from the geographic area of concern with **travel and per diem for team members being paid by the Department.**"

7. To this end, NVAC-AFGE contends that the past practice of VA has been to allow intermediate bargaining and to pay for travel and per diem for team negotiators who are outside of the local area in situations where there are two or more locals at one facility under one management. Further, NVAC-AFGE notes that that in her May 14, 2003 letter, Ms Kerber stated that "the President of the AFGE National VA Council may name the union bargaining committee." However, the past practice has been that the naming of local members to a bargaining team indicates intermediate bargaining. Moreover, the past practice has been that the President of the NVAC does not appoint members for local bargaining. Therefore, your (Ms Kerber's and VA's) current interpretation and application of Article 44, section 4(B) violates the VA Master Agreement, past practice and established ground rules.

8. As noted earlier, Article 44, section 4(B), mandates that proposed changes in personnel policies, practices, or working conditions affecting the interests of two or more local Unions within a facility shall require notice to a party designated by the NVAC President with a copy to the affected local Unions. However, this section does not state that in this situation that the bargaining demand should be addressed to local management and that no travel and per diem will be paid for union team negotiators who are outside of the local area. In fact, it only addresses the issue of notice to the NVAC President with copies of that notice being sent to the affected Unions.

As previously mentioned, the past practice of VA has been to allow intermediate bargaining and payment for travel and per diem for team negotiators who are outside of the local area in situations where there are two or more locals at one facility under one management. See *Strathmore Paper Company v. United Paperworkers International Union, AFL-CIO and United Paperworkers International Union, Local 197*, 900 F.2d 423 (“[I]t has been held that a contract may be found to incorporate past practice even though not mentioned.” Citing *International Bhd. Of Electrical Workers v. WNEV-TV*, 778 F.2d 46 (1st Cir.1985). See also *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960) (“Industrial common law—the practices of industry and the shop, is equally a part of the collective bargaining agreement although not expressed in it.”).

9. As a remedy, NVAC-AFGE requests that you (Ms Kerber and VA) immediately cease and desist from denying travel and per diem for union team negotiators who are outside of the local area in situations where there are two or more locals at one facility under one management.
10. 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 202-639-6426.

cc: Alma L. Lee, President, NVAC
Laura Miller, Deputy Under Secretary for Health
Bonnie Kerber, HR Consultant, VHA HRM Group