



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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December 30, 2008

By Facsimile and Regular Mail

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Department of Veterans Affairs
1575 I Street, NW, Suite 250
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National Grievance

This is a National Grievance filed by the American Federation of Government Employees (AFGE) in accordance with Article 42, Section 11, of the Master Agreement between the Department of Veterans Affairs (VA) and AFGE ("Master Agreement") signed March 21, 1997. This National Grievance is filed against you and any other associated VA officials for violations of the Master Agreement Articles 4, Sections 1A and B, Article 45, Section 1B, past practice and all other related laws and regulations, including but not limited to Title 5, as a result of the denial of official time by Bonnie Kerber, VA Human Resources Consultant, Scott Foster, VA Human Resources official and the Human Resource Directors at the other respective facilities for AFGE-VA union representatives to attend the December 5, 2008 Leadership training for union officials within the New York Metropolitan area held at the Bronx VA Medical Center.

The relevant provisions of Article 4 of the Master Agreement, entitled "Labor-Management Relations Training" provide the following:

Section 1 - Union Sponsored or Requested Labor-Management Relations Training

A. The parties agree that Union sponsored labor-management relations (LMR) training is of mutual benefit when it covers appropriate areas. Training which relates to internal union business will not be conducted or attended on official time.

B. Scheduling arrangements for the use of official time for training will be determined locally. Management personnel responsible for work scheduling will be given appropriate and adequate notice, to include specific agendas, of scheduled LMR training for maximum attendance.

Additionally, under Article 45, entitled "Official Time", Section 1, entitled "Purpose" the parties agreed that "official time shall be granted in amounts specified by this Agreement or otherwise negotiated for the purpose of, in part, "B. Handling other representational functions".

In the instant case, at the request of AFGE-NVAC District Representative Ena Thompson Judd, AFGE-NVAC Director of Education and Training (DET) James Dunphy conducted training for union officials within the New York Metropolitan area at the Bronx VA Medical Center. This training consisted of joint training on December 3, 2008 on the Master Agreement, training on December 4, 2008 on Representational Duties of Stewards and Officers, and training on December 5, 2008 on Leadership and Representation (hereinafter, Leadership course or Leadership training).

AFGE notes that official time was granted by VA for training on December 3 and 4, 2008. Initially, a number of VA facilities also granted official time for training on December 5, 2008. However, by the time the training took place, multiple VA facilities had denied official time upon direction from Ms Kerber and Mr. Foster, and the participants were required to take annual leave. The announced reason for the denial of official time was that the Leadership course was determined to be internal union business.

AFGE points out that the Leadership and Representation course taught by Mr. Dunphy was adapted from a course taught by Joseph (Ray) Tober of the VA National Canteen Service. Mr. Dunphy attended this training in September 2008, and subsequently utilized the organization and materials with permission from Mr. Tober in the Leadership course that he taught on December 5, 2008. It is important to note that Mr. Tober also taught a class on Leadership for an extended period of time at the NVAC Convention in November 2007 at which time there was no issue of the granting or denial of official time or a requirement that attendees take annual leave.

Additionally, AFGE maintains that AFGE union representatives submitted their request for official time in advance of the need to use it and in a proper and timely fashion as set forth in Article 4 "Labor-Management Training" of the Master Agreement. AFGE contends that no where in the Master Agreement are Union representatives required to use their personal annual leave for training. Indeed, under Article 32, "Time and Leave", Section A, provides that: Annual Leave is provided to allow employees extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes. Further, under Article 32, interest." Section 21 "Excused Absence (Administrative Leave), "[e]xcused absence (sometimes referred to as administrative leave) is absence from assigned duties without charge to leave or loss of pay. The parties agree that excused absence may be granted for activities which are in the Government's interest."

Further, nothing in the Master Agreement equates annual leave to duty time or official time for training. Thus, a change by VA officials in this regard constitutes a unilateral change in working conditions in violation of 5 U.S.C. § 7116(a) (1) (a) and 5. See Social Security Administration Seattle Region Seattle, Washington and American Federation of

Government Employees Local 3937, AFL-CIO, FLRA ALJ Dec. Rep. No. 171 (2002). Further, an Agency may not change unilaterally a condition of employment established through past practice even if the condition established by the past practice differs from the express terms of the parties' collective bargaining agreement. See Patent and Trademark Office and Patent Office Professional Ass'n, 39 FLRA 1477 (1991).

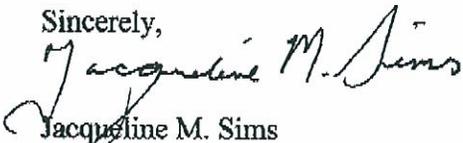
Moreover, AFGE notes that training is such an integral part of the "Agency Mission" that VA and AFGE negotiated Article 4, "Labor-Management Training" which specifically focuses on labor-management training. In this regard, AFGE points to Article 4, Section 1A which reads as follows: [t]he parties agree that Union sponsored labor-management relations (LMR) training is of *mutual benefit* when it covers appropriate areas.

Therefore, AFGE maintains that as a result of: 1) VA's own use of Mr. Tober's Leadership course for VA employees; 2) Mr. Dunphy's personal attendance at Mr. Tober's training in September 2008; 3) Mr. Dunphy's adaptation of the Leadership course taught by Mr. Tober with his permission; and 3) no issue of official time or a requirement that attendees take annual leave when Mr. Tober taught the Leadership course for an extended period at the NVAC Convention in November 2007, VA's arguments for denial of official time the December 5, 2008 AFGE Leadership training are not supported by its past practice or the parties' Master Agreement and are without merit.

As a remedy, for the above-noted violations, AFGE requests that: 1) VA cease and desist from denying AFGE Union representatives requests for official time for the VA adapted Leadership course currently pending or in the future; 2) union representatives who had to use annual leave to attend this course should have their leave converted to official time and their annual leave restored; and 3) those affected union officials should receive official time restored for the time needed to travel to the December 5 Leadership training. Additionally, those so affected shall be made whole in all respects.

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 202-639-6425.

Sincerely,



Jacqueline M. Sims
Assistant General Counsel, AFGE-NVAC

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