



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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July 11, 2005

By Facsimile and Regular Mail

Ronald E. Cowles
Associate Deputy Assistant Secretary
for Labor-Management Relations
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Subject: **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 Bonnie M. Kerber, Human Resources (HR) Consultant, Veterans Health Administration Human Resources Management Group (VHA HRM Group), 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 VA's denial of official time for AFGE-VA union representatives to attend the 2005 AFGE Human Rights Training Conference during the week of August 1 to August 5, 2005 at the Wyndham Miami Beach Resort in Miami Beach, Florida.

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

Section I - 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 (examples are: contract administration, grievance handling and information relating to Federal personnel/labor relations laws, regulations, and procedures). 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 the pertinent sections of Article 45, entitled "Official Time", the following relevant language is set forth:

Section 1 - Purpose

The parties recognize that good communications are vital to positive and constructive relationships between the Union and VA Management. These communications should facilitate and encourage the amicable settlement of disputes between employees and Management involving conditions of employment and should contribute to the effective and efficient conduct of public business. They further recognize that this consolidated unit is very large and complex and requires Union coordination of its representational activities at several levels. Thus, official time shall be granted in amounts specified by this Agreement or otherwise negotiated for the purpose of: B. Handling other representational functions.

Initially, AFGE notes that nearly every two years for the last twenty years, under the leadership of the AFGE National Vice President for Women's and Fair Practices, the Women's and Fair Practices Department, along with the Human Rights Committee, host a Human Rights Training Conference, inviting participants throughout the nation to join in the goals of the union and the Departments. These Training Conferences bring together AFGE members for intensive week-long classes which includes training for the performance of representational functions. Moreover, the material presented at this training course provides information that is of mutual concern and benefit to the Department and the union representative.

This year's conference will feature over 55 different workshops held daily from 8:30 am to 5:00 pm on federal sector labor-management and civil rights issues, including those on the Women's Fair Practice coordinator structure and responsibilities, Equal Employment Opportunity (EEO) basic, intermediate and advanced training, stewards' training, collective bargaining, and a one-day course sponsored by the AFGE National VA Council. The last training offered, in 2002, educated union representatives attending the multi-track human rights training in the same or similar issues for which official time/administrative leave was granted. (The 2004 AFGE Human Rights Training Conference was cancelled due to the Florida hurricanes).

This National Grievance is being filed because for the first time in the twenty year history of the AFGE Human Rights Training Conference many AFGE VA union representatives have been arbitrarily denied official time/administrative leave to attend this years' AFGE Human Rights Training Conference in Miami, Florida and are being required to use their annual leave to attend the conference. In this regard, AFGE notes that, it has recently discovered that, on May 24, 2005, Bonnie Kerber, VA HR Consultant, sent an e-mail message regarding "AFGE Human Rights Training Conference" to VHA HR Managers and VHA HRM Group with copies sent to VHA National LR/ER Specialists which reads as follows:

The agenda for this conference scheduled for August 1-5, 2005 has been reviewed by management and a determination has been made that it is not appropriate to allow employees to utilize official time for this conference. If you have any questions feel free to contact me of the VACO LMR office.

Initially, AFGE notes that Ms Kerber did not show any basis to support and substantiate her conclusion that the 2005 AFGE Human Rights Training Conferences is "not appropriate to allow employees to utilize official time for this conference. In this regard, AFGE maintains that official time or administrative leave for this training conference has been provided in the past without VA imposing an unreasonable and arbitrary "blanket denial" of official time. In *American Federation of Government Employees, Local 147 and Department of Health and Human Services, Social Security Administration, San Francisco, CA* 82 FLRR 2-2093 (April 7, 1982), the Authority found that "the agency abused its discretion when it denied official time for training to union stewards". It noted that, similar to the instant case, "[t]he negotiated contract stated that union representatives might be excused to attend training that was of mutual concern to labor and management. Therefore, the employer's 'blanket denial of leave' was a contract violation." See Master Agreement, Article 4 (1) (A).

Applicable law (5 U.S.C. § 7131(d)) provides that an employee representing an exclusive representative shall be granted official time for such activity in any amount the agency and exclusive representative agree to be reasonable, necessary and in the public interest. In *Department of the Army, Directorate of Information Management, Fort Carson, CO and American Federation of Government Employees, Local 1345*, 103 FLRR-2 126, (January 14, 2003), the Federal Labor Relations Authority (FLRA) stated that:

An Agency cannot unilaterally or summarily deny a request for official time. The presumption of the law is that the official time for union activities will be granted or, at the very least, the parties will work something out in a spirit of cooperation to ensure that both the Agency achieves its goals and mission and the Union will have a concomitant opportunity to utilize union resources, officers and stewards to perform its duties in representing bargaining unit employees.

Moreover, AFGE argues that this years' conference agenda has the same or similar workshops and classes as the previous AFGE Human Rights Training Conferences for which VA officials were granted official time or administrative leave in the past. Thus, VA's "blanket denial" for this years' request by Union officials and representatives for official time/administrative leave to attend the conference is not supported by its past practice and is without merit. (See *American Federation of Government Employees, Local 2221 and Department of Defense, Air Force, Newark AFS, OH* 86 FLRR 2-2035 5 (May 5, 1986) "[t]he fact that the training has been approved in the past reflects recognition of the intent in Section 4.11 that training in rights and responsibilities in areas of Employer action which impacts on the terms and conditions of employment does have mutual benefit to the Employer and the Union.)

In further support of its argument that official time/administrative leave should be granted to this mutually beneficially training conference, AFGE points to VA's own acknowledgement of its specific focus and dedication to the EEO arena. As revealed by VA's Office of Diversity Management and Equal Employment Opportunity (DM&EEO) (Office of Human Resources and Administration) Executive Summary of the "Department of Veterans Affairs FY 2004 MD-715 EEO Program Status Report":

VA has been at the forefront of the Federal Government in supporting and implementing Equal Employment Opportunity Commission (EEOC) Management Directive 715 (MD-715). . . . VA has actively incorporated diversity issues in its Strategic Plan and workforce planning efforts. From October 2002 to April 2003, VA conducted an in-depth self-assessment of staffing practices for the Secretary's Task Force on the Employment and Advancement of Women (expanded to cover all minority and disability groups). Concurrently, VA also conducted an in-depth review of EEO and diversity practices. These assessments led to remedial efforts addressing recruitment, retention, training, and corporate culture issues which were well underway as EEOC was issuing the final MD-715 implementing instructions.

AFGE supports VA's efforts and strides in this vein, and similarly, requests that VA support its efforts to train and educate its representatives on EEO, diversity and other mutually beneficially issues. In this regard, AFGE contends that an educated workforce of AFGE Union officers, stewards and other representatives who understand laws and regulations related to EEO and diversity issues and the ever evolving EEO policies and initiatives is vital to proper and adequate representation and more importantly provides a mutual and vital benefit to AFGE and the Department. This contention is predicated upon there being an advantage to the Department, as well as to the Union, that employee representatives be knowledgeable in matters concerning the basic statutes, regulations and agency policy and negotiated agreements affecting the EEO matters.

In *American Federation of Government Employees and Social Security Administration*, 98 FLRR 2-1052 (January 16, 1998), the Authority concluded that "the agency violated the agreement by denying official time to union officials to attend two conferences." It noted that "[a] workshop on improvement of services to employees with respect to grievances, FLRA, impasse and EEO was completely involved with representation matters... ." AFGE contends that it is mandated under the Statute to protect the rights of the Bargaining Unit members and, notably, this training conference gives them the training and guidelines to do so.

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 (examples

are: contract administration, grievance handling and information relating to Federal personnel/labor relations laws, regulations, and procedures). (Emphasis added).

Indeed, VA and AFGE have clearly identified the extreme importance of the EEO arena and EEO issues by specifically dedicating Article 17 of the Master Agreement to the subject of "Equal Employment Opportunity". Notably, under Section 1 of this Article, the "Department and the Union affirm[ed] their commitment to the policy of providing equal employment opportunities to all employees and to prohibit discrimination because of race, color, religion, sex (including sexual harassment), sexual orientation, national origin, age (40 years of age and over), or disabling condition."

In this regard, AFGE notes that on a daily basis the conference will hold workshops specifically geared toward EEO training, including, but not limited to EEO law and procedures, preparing cases, mediation and discovery and preparing for the actual hearing. AFGE also points out that under Article 17, Section A, VA and AFGE "agree[d] to establish a two- (2) year joint pilot program to assess and improve the Department's EEO Program with the formation of a National EEO Review Committee" with the parties appointing representatives to serve on this Committee and the National EEO Review Committee to:

- Bring to the attention of the Department any trend, problems, issues, or circumstances that upon the Committee's review should be changed to improve the Department's EEO Program;

- Review EEO and Affirmative Employment Plans and Programs and recommend actions which would contribute to the success or improvement of these programs; provide advice and assistance regarding specific personnel management practices and problems of an EEO nature which adversely affect employees and/or the Department's mission (e.g., merit promotion procedures, selection for training, distribution of awards, and disciplinary actions); and

- Provide recommendations concerning the communication and promotion of the Department's EEO Program and goals; and serve as a forum for the consideration of ideas submitted by the Union and/or the Department to improve the EEO Program or presented in response to Committee recommendations.

Additionally, AFGE notes that this conference is not scheduled to take place until August 1, 2005; however, AFGE union representatives have submitted their request for official time well in advance of the need to use it and in a proper and timely fashion as set forth in Article 4. AFGE maintains 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, 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."

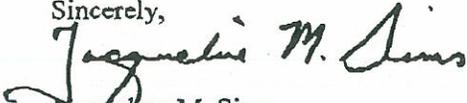
Further, nothing in the Master Agreement equates annual leave to duty time or official time for training. Thus, a change by VA officials in this regard constitutes a unilateral change in working conditions in violation of 5 U.S.C. § 7116(a) (1) (a) and 5. See Norwalk Naval Shipyard and Tidewater Virginia Federal Employees Metal Trades Council, 4 FLRA 686 (1980). 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).

AFGE's National Vice President for Women's and Fair Practices, Andrea Brooks has noted that the AFGE Human Rights Training Conference has always been open to any member, and thus far, VA is the only agency denying official time in this manner. AFGE union representatives throughout the country attend this conference with the full support of their respective agencies because of the mutual benefit this training provides to those agencies and AFGE. Consequently, AFGE contends that as a result of the extensive and comprehensive nature of this training, AFGE union representatives will be able to substantially contribute to the Agency's mission and commitment to EEO, diversity and other related initiatives and programs which will provide a mutual benefit to both the Department and the Union. Therefore, based on the above, AFGE maintains that official time/administrative leave should be granted to union representatives to attend the 2005 AFGE Human Rights Training Conference.

As a remedy, for the above-noted violations AFGE requests that you and any other associated VA officials shall: 1) cease and desist from denying AFGE Union representatives requests for official time or administrative leave to attend the 2005 AFGE Human Rights Training Conference; 2) convert all AFGE Union representatives currently approved annual leave for the conference to administrative leave; 3) grant all currently pending or future AFGE Union representatives requests for official time or administrative leave to attend the conference the 2005 AFGE Human Rights Training Conference.

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
Andrea Brooks, AFGE National Vice President for Women's and Fair Practices