



American Federation of
Government Employees

Memorandum

Grievance on behalf of Attorney Advisors (Veterans) in the Office of Veterans Law Judges (OVLJ)

Dated: December 6, 2017

To: David Spickler, Executive in Charge, Board of Veterans' Appeals, Department of
Veterans Affairs (VA)

Re: Annual production quota that is unreasonable, unrealistic, and unattainable

From: Douglas E. Massey, President, American Federation of Government Employees
(AFGE), Local 17, AFL-CIO.

1. Statement of Grievance: This is a step 3 Grievance filed under the provisions of Article 43, Section 7 of the Master Collective Bargaining Agreement (MCBA) between AFGE and VA, effective March 15, 2011. In accordance with Article 43, Note 5, this Grievance is initiated at Step 3 because the requested relief and corrective action is clearly beyond the authority of the step 1 and step 2 supervisors.

The Board is comprised of approximately 800 OVLJ attorneys in the bargaining unit who draft tentative decisions and other work products for Veterans Law Judges (VLJ). One of the critical elements for attorneys is "productivity for decisions and other work assignments. Effective October 1, 2017, the Board increased the annual productivity requirement from 125 to 169 cases. This constitutes a 35% increase in the annual quota. As a result, attorneys are required to work beyond their tour of duty.

Drafting tentative decisions has dramatically changed in recent years, requiring attorneys to spend more time on each decision. The most significant changes involve going from a paper file to a paperless system, as well as the growing complexity and length of appeals. These changes are beyond the attorneys' control. The result is that the annual quota of 169 is unreasonable, unrealistic,

and unattainable, making it impossible for attorneys to meet the standard without working nights and weekends.¹

2. Statement of Violation: AFGE Local 17 asserts the right to amend this Grievance if violations of any other applicable sections of the contract, laws, or regulations are discovered.

By increasing the annual quota for OVLJ attorneys, the Board violated, and continues to violate, the following:

- Article 27 of the MCBA: requiring that performance standards be fair and objective, as well as reasonable, realistic, and attainable;
- Article 27: requiring that that employees not be held accountable for factors which affect performance that are beyond their control;
- 5 U.S.C. § 4302(b)(1): requiring ‘performance standards . . . be based on objective criteria that are reasonable, realistic and attainable’² ; and
- any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

3. Statement of Remedy: The Union asks that, to remedy the above situation, the Board agree to the following:

- To immediately return to the former annual quota of 125 cases;
- within 60 days, conduct a time-motion study to determine a reasonable quota; and
- agree to any and all other remedies appropriate in this matter.

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 Grievance, please contact Douglas Massey (202) 361-3017.

¹ The Board’s refusal to properly pay attorneys for unpaid overtime is the subject of a separate grievance.

² *NTEU Chapter 229 and HHS*, 32 FLRA 826, 830 (1988) (NTEU) (*citing Walker v. Dep’t of the Treasury*, 28 M.S.P.R. 227, 229 (1985)); *accord Newark Air Force Station*, 30 FLRA 616, 628-29 (1987)