American Federation of Government Employees,
Affiliated with the AFL-CIO
Council 260

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Date: September 21, 2016
From: Ashby Crowder, Principal Representative, AFGE Council 260
Subject: RD Time and Leave Policy
To: Ann Cummings, R (Acting); Christopher Wilder, HPL

STATEMENT OF GRIEVANCE

This statement is to notify the National Archives and Records Administration (NARA) that the American Federation of Government Employees (AFGE) is invoking the negotiated grievance procedure as outlined in Article 24, Section 8 of the National Agreement between NARA and AFGE. This grievance procedure is being invoked to seek remedy for violations of Articles 7, 9, and 33 of the National Agreement, NARA 304, 5 USC §7116(a)(1), 5 USC §7116(a)(5), and all other applicable provisions of the collective bargaining agreement, laws, rules, and regulations. The grievance has both group and institutional components. For the group aspects, the Union is filing on behalf of bargaining unit employees in RD. Because the institutional and group issues are interrelated, they are included in one document to facilitate the consolidation of these matters into one arbitration hearing, absent settlement, before a neutral arbitrator selected from the panel of arbitrators the parties have established for the Washington DC region.

Organizational Component: RD
Access Coordinator: Ann Cummings

Description of Violation & Basis for Grievance: This grievance concerns recent developments around RD's time and leave policy, involving both the issuance to employees of a policy document entitled RD Units Core Time and Leave Procedures (hereafter the RD Policy Document), and the communication with employees about this document, and its background and development. Violations consist of three types. First, certain provisions constitute new conditions affecting matters already covered by a collective bargaining agreement. Second, the structure and design of the document is misleading and inaccurate. Third, the employer has communicated to employees both established policy, and policy changes we contend are violative, in a manner that violates the Union's institutional rights.

1. "Covered By"

Leave and credit time procedures are covered by Articles 7 and 9 of the National Agreement. Consistent with Article 33 and 5 USC §71, the employer must wait until term negotiations when the full contract is open to make proposals on these topics. Citing Article 7 and NARA 333 as authorities, the RD Policy Document states that "supervisors

will not approve the earning of credit time for days when leave is used." This violates Article 7, Section 5 of the National Agreement, according to which an employee on flexitime or flexitour may elect to earn credit time with the "supervisor's prior approval." Article 9 does not disallow the combination of leave and credit time in a single work day. Rather, it provides that "employees have the right to use leave subject to supervisory approval." The announced policy removes discretion from the supervisor in violation of the National Agreement.

Citing Article 9 and NARA 304 as authorities, the policy document states that "requests for leave must be submitted at least 24 hours ahead of leave time." Article 9, Section 2, meanwhile, provides that "employees should ordinarily request annual leave at least one day in advance." The sleight of hand making "ordinarily…at least one day" to automatically mean 24 hours constitutes a change in conditions on a matter already covered by collective bargaining. A policy that a day always constitutes 24 hours carries a unit-measurable precision that the parties did not write into their agreement. Per the conditions set forth in the RD Policy Document, a leave request for an employee on flextime for all day Tuesday that was submitted to the supervisor Monday at 9:15AM would be untimely. Such a change would supersede a rule of reasonableness that has governed the parties' understanding of what constitutes a day, under which leave would be considered timely requested when submitted the previous day, provided it was within a reasonable frame of time before the end of the work day. The exactitude required by a 24 hour rule is a new policy and more than a *de minimis* change in conditions of employment.

The RD Policy Document's provisions governing medical documentation violate the National Agreement. The RD Policy document repeatedly invokes the laundry list of personal medical information set forth in NARA 304.64. This list purports to serve as an elucidation of the information required for normal, routine use of sick leave, but this is mistaken. Under NARA 304, diagnosis, prognosis, treatment plan, and identification of restrictions are items of information specifically required when requesting sick leave to care for a family member with a serious health condition. Article 9 of the CBA provides only that "management may also require medical certification" for absences of 4 or more work days. The imposition of this policy for all requests for information is inconsistent with the National Agreement, and it therefore constitutes an unlawful unilateral change in terms and conditions of employment in violation of 5 USC §7116(a)(5).

2. Structure and Design

The document portrays very specific "guidance" as rooted in authorities consisting of NARA policy and provisions of the National Agreement. This is incorrect and misleading. An authority is an accepted source of information that controls, commands, or determines an outcome.

The document attributes multiple elements of "guidance" to the National Agreement that are either contrary to the agreement or not actually contained within it. Part 1 of this grievance sets forth the outright violations contained within this RD Policy Document.

The document also falsely indicates that the employer and the union have bargained over a number of local matters, such as the core hours of specific RD units and the credit time arrangements for specific units. Certain practices may well be consistent with the National Agreement, but a matter may be consistent with the agreement without drawing its authority from the agreement. It violates 5 USC 7116(a)(1) for the employer to invoke the agreement as an authority in representing to employees that the exclusive representative holds responsibility for decisions left to its discretion.

3. Communication to Employees

Management's meetings with employees to explain the RD Policy Document have involved a number of troubling statements by management officials to employees. For example, at a meeting on September 15, 2016, of which the employer gave proper notice and at which the union was represented, a management official told employees that he and other officials were "shocked that the union let this happen," that the policy changes were rooted not in the choices of RD management, but in pressures from other NARA administrative offices, and in of an obligation to be in compliance with a union contract. At a meeting on September 14, 2016, a management official stated that the procedures established in the RD Policy Document had been negotiated with the AFGE, which is not correct.

The employer violates 5 USC §7116(a)(1) by telling employees an exclusive representative is responsible for a decision unless the union had direct and majority control over that decision. Moreover, a management official's comments to unit employees that besmirch the exclusive representative's negotiating prowess have the effect of interfering with, restraining, or coercing employees in the exercise of their rights under 5 USC §71.

Proposed remedy: That the RD Policy Document be immediately withdrawn and that its implementation be rescinded. That any communication about leave, credit time, and medical documentation policy established in the National Agreement and NARA policy be consistent with the National Agreement. That the employer post a remedial notice in all RD bargaining unit work areas stating that it violated the Statute by refusing to consult or negotiate in good faith with a labor organization as required by 5 USC §71, and by interfering with, restraining, or coercing employees in the exercise by the employee of rights under the Federal Service Labor-Management Relations Statute.

I do not request a meeting to discuss this grievance. However, if management would like to meet to discuss it, I will do so.

Sincerely;

ASHBY CROWDER
Principal Representative
AFGE Council 260

Paper copy to addressees only.

cc: Darryl Munsey, President, AFGE Council 260
Vernon Early, President, AFGE Local 2578
Union Representatives in RD units