



NATIONAL VETERANS AFFAIRS COUNCIL

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

Out of Many/One Union
AFGE NVAC/AFL-CIO

Providing Input on COVID-19 When the VA Refuses to Bargain

The NVAC has filed a national demand to bargain on changes in conditions of employment implemented in response to the Coronavirus disease 2019 - COVID-19. Many Locals have also filed demands to bargain. This paper is to address some of your bargaining concerns.

The VA has a duty to bargain over its COVID-19 response.

While it is well-established that, generally, obligations to bargain must be fulfilled prior to implementation of a change in conditions of employment, it is correct that, under 5 USC §7106 (a)(2)(D), management has a right “to take whatever actions may be necessary to carry out the agency mission during emergencies.” However, this right does not remove the obligation to bargain. The management rights listed in 5 USC §7106(a), which includes the “emergency” right, are subject to the union’s right to bargain under 5 USC §7106(b).

Contrary to the VA’s assertions, the Statute does NOT carve out actions taken during emergencies from procedures and appropriate arrangements bargaining.

Further, only proposals which either directly interfere with agency action or prevent the agency from taking the emergency action are nonnegotiable. So we are left with two conclusions: 1) where the emergency could have been anticipated in advance, pre-implementation bargaining is required (much of which is already in the Master Agreement); and, 2) where there is no advance warning of an emergency, post-implementation bargaining is required.

What to do if VA responds that it will not bargain.

- The Union should give management its proposals anyway. Go to www.afge.org/coronavirus for Bargaining Guidance on the coronavirus. As the Union becomes aware of new failures around the facility, supply updated/amended proposals. As they make additional changes, update/amend the proposals. The Union can also send the proposals to the bargaining unit or place them on the Union’s bulletin board so that everyone is aware.
- The Union can file a ULP or grievance-ULP if the VA refuses to bargain.
- If the VA responds that the Union’s proposals are nonnegotiable or illegal, the Union can file a negotiability appeal (petition for review) with the FLRA.

The Department’s obligation is NOT satisfied by “keeping the Union informed.”

Many facilities are offering to “engage with” the Union; some are saying they will keep you informed. It is not a waiver of the Union’s rights to take them up on those offers. The Union should actively receive management’s so-called “courtesy” notices. The Union should actively provide its thoughts and suggestions. Maybe they will adopt the suggestions, maybe they won’t, but the safety of employees is paramount! We shouldn’t let the VA’s intransigence get in the way.

For specific concerns not addressed here, please contact nvacattorney@afge.org.