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**IN THE MATTER OF THE ARBITRATION**

Between

**EMPLOYER/AGENCY**

Department of Veterans Affairs  
John J. Pershing  
Veterans Administration Medical Center  
Poplar Bluff, Missouri

And

**UNION**

American Federation of Government Employees,  
AFL-CIO; Local 2338

**FMCS Case No. 17-56159**

**GRIEVANCE**

Determination As To Whether the  
Agency Failed To Timely Process  
Increase In Union Dues Payroll  
Deduction Thereby Delaying  
Implementation For Twelve (12)  
Pay Periods In Violation of Article  
45 of the 2011 Master Collective  
Bargaining Agreement

**OPINION and AWARD**

**PRELIMINARY INFORMATION**

**CASE PRESENTATION – APPEARANCES**

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## ISSUE

At the Hearing, the Parties jointly agreed that the issue before the Arbitrator for resolution on the merits is as follows:

**Did the Agency violate the Collective Bargaining Agreement when it failed to increase the amount deducted for dues from union members as required by applicable provisions of Article 45 of the Agreement?**

**If so, what shall be the appropriate and proper remedy?**

## CHRONOLOGY OF RELEVANT EVENTS

By Email From Kevin Ellis, Local 2338 Union President To Poplar Bluff Veterans Affairs Finance Payroll Department, Ellis Apprised the Department Union Dues Per Capita Had Been Increased by \$1.50 Per Pay Period From \$15.75 to \$17.25 and Advised the Department the Increase Needed To Be Reflected at the Local Level (Jt.Ex.1); Email Dated <sup>2</sup> January 9, 2017

By Email From Sharon Meadows, Budget Technician To The Veterans Integrated Service Network (VISN) Business Office, Meadows Inquired as to Whether Ellis' Notification Of the Increase in Per Capita Union Dues Increase Was Sufficient or Whether There Was a Form For Such Notification; Meadows Also Queried VISN if She Were Correct that VISN Sends the Email for the Union Rate Change, Asking VISN to Please Advise; Email Dated January 15, 2017

In a Follow-up Email to VISN, Meadows Noted She Had Yet to Receive an Answer to Her Inquiries and Again Asked What the Procedure Was for the Local Union to Increase Its Dues and Asking to Please Advise; Email Dated March 2, 2017

By Email From Julie Alexander at VISN to Meadows, Alexander Informed Meadows that the Union's Notification of the Per Capita Dues Increase Needed To Go To Human Resources; Email Dated March 3, 2017

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<sup>2</sup> It was noted in an email dated February 23, 2017 from Ellis to Katina Dudley (no title identified), explaining the per capita dues increase of \$1.50 was voted on, adopted and passed by 500 members representing every VA local union across the nation at the November, 2016 National VA Council Convention. Ellis apprised that when a per capita tax is raised at the National Level of the Union, the affiliated local unions are required to raise their per capita union dues by the same amount (Un.Ex.4).

# CHRONOLOGY OF RELEVANT EVENTS (continued)

Email From Denton to Quinlan Apologizing for Having  
Forgotten to Attach the List of Union Members; Email  
Dated March 6, 2017

Email From Mickey Deckard, Financial Accounts  
Technician, Payroll Liaison to Donna Goode, Supervisory  
Program Specialist, Financial Payroll Service, Financial  
Services Center, Washington, D.C. and Denton,  
Inquiring of Goode, Since Quinlan Was Retiring, if She  
Was the Person to Whom to Send the Information  
Regarding the Rate Increase in Union Dues; Email Dated <sup>4</sup> March 6, 2017

By Memorandum From Local Union President Kevin Ellis,  
To Patricia Hall Medical Center Director, the Union Filed  
A Written Grievance Directly at Step 3 of the Contractual  
Grievance Procedure Informing It Had Notified the Agency  
Of a Dues Increase to Bargaining Unit Employees on  
January 9, 2017 and Claiming the Union Had Been Harmed  
By the Agency Not Processing the Increased Dues Amount  
Thereby Resulting in a Loss of Compensation to the Union;  
Step 3 Written Grievance Dated (Jt.Ex.2). June 19, 2017

Email From Karen Coan Moore, Management Analyst Financial  
Payroll Service, Financial Services Center Washington, D.C. to  
Goode and Kristy Williams, Chief Financial Officer With Copy to  
Poplar Bluff (PB) Finance Payroll, PB Human Resources Specialists,  
Gerry Mettenburg (SMS) and Karen Coan Moore, Wherein  
Moore Apprised the Request # 111109 Pertaining to the Union  
Dues Increase Was Submitted To the DCPS Table Team to  
change Option A to \$17.25 for DCPS Union Code V42 ; It is  
Expected that DCPS Will Release on 07-07-17 and the Deduction  
Rate Will be Effective 06-25-17 for Pay Period Ending (PPE)  
07-08-17; Please Do Not Update the Employee Master Record  
Until After 07-07-17; Thanks!; Email Dated June 20, 2017

<sup>4</sup> This March 6<sup>th</sup> chain of eight (8) emails began at 1:22 pm from Denton to Meadows followed by Fowler's email to Denton and Meadows at 1:26 pm; followed by email from Denton to Fowler and Meadows at 1:27 pm; followed by email from Denton to Quinlan and response email by Quinlan to Denton both at 2:12 pm; followed by email from Denton to Meadows at 2:14 pm; followed by a second email from Denton to Quinlan with copy to Finance Payroll and to Joseph Powers, VISN Payroll Liaison also at 2:14 pm; and ending with email from Deckard to Goode and Denton at 3:46 pm (AgencyEx.1 & Jt.Ex.3).

**CHRONOLOGY OF RELEVANT EVENTS (continued)**

Written Notice From the Federal Mediation & Conciliation Service Informing This Arbitrator of His Mutual Selection by The Parties and the FMCS' Appointment of this Arbitrator to Preside Over the Matter of This Subject Arbitration; Date Notice of Appointment Received by the Arbitrator by email December 14, 2017

Date Arbitration Hearing Held February 1, 2018

Email From the Arbitrator to Advocates Smith and Ellis Summarizing Closing Arrangements Agreed Upon by the Parties at the Conclusion of the February 1, 2018 Hearing; Parties Were to File Post-Hearing Briefs On or Before March 5, 2018 in Both Electronic and Paper Format; Email Dated February 8, 2018

Email From the Union Sent to the Arbitrator and Smith Requesting a One (1) Week Extension For Filing the Post-Hearing Brief to March 12, 2018, Without Objection From the Agency, Request For Extension Was Granted by the Arbitrator; Email Dated March 5, 2018

Email From the Arbitrator to Ellis, Theodore Hughes and Smith Acknowledging Receipt of the Union's Post-Hearing Brief by Email Attachment; Email Dated March 13, 2018

Date Post Hearing Briefs Received By the Arbitrator

**UNION**  
**EMPLOYER / AGENCY**

March 13, 2018<sup>7</sup>  
Never Filed or Received<sup>8</sup>

<sup>7</sup> Receipt date of the Electronic filing of the Post-Hearing Brief. The paper copy of the brief sent by U.S. Mail was received by the Arbitrator on March 17, 2017. The Arbitrator noted these two (2) receipt dates in an email dated March 23, 2017, sent to Denise Smith apprising the Agency's post-hearing brief had yet to be received and requesting Smith to inform the Arbitrator as to the status of submission of the Agency's post-hearing brief. Smith never responded to the Arbitrator's request for an update pertaining to the status inquiry.

<sup>8</sup> Notwithstanding several attempts to reach Agency Advocate Denise Smith pertaining to the filing of the Agency's Post-Hearing Brief as mutually agreed to at the February 1, 2018 hearing, none of the attempts were responded to. On May 17, 2018, Union Attorney Theodore Hughes by email to the Arbitrator requested an update regarding the status of the case and the filing of the Agency's post-hearing brief. In a subsequent May 17<sup>th</sup> email, Hughes moved to have the Arbitrator declare the case record closed noting that any further delay is causing a detriment to his client (Union Local 2338) as, at that point in time, the Union had been deprived of the payment of the increased amount of per capita dues for more than a year. Hughes asserted it was imperative for the Arbitrator to issue a decision in favor of the Union and against the Agency. In response, the Arbitrator concurred in Hughes' position but indicated by email dated May 17<sup>th</sup>, he would make one last attempt to have the Agency state its position on the record. As an aside, in his Motion to close the case record, Hughes asserted that at the hearing the Agency

## **Section 7 – Procedure**

\* \* \* \*

### **Step 3**

If no mutually satisfactory settlement is reached as a result of the second step, the aggrieved party or the Union shall submit the grievance to the Director within seven calendar days of receipt of the decision of Step 2. The recipient of the grievance shall date and sign the grievance. The Step 3 grievance must state, in detail, the basis for the grievance and the corrective action desired. The Director or designee shall meet with the aggrieved employee (s) and their Union representative(s) within seven calendar days from receipt of the Step 3 grievance to discuss the grievance. The Director or designee will render a written decision letter to the aggrieved employee(s) and the Union within 10 calendar days after the meeting.

### **Step 4**

If the grievance is not satisfactorily resolved in Step 3, the grievance may be referred to arbitration as provided in Article 44 – Arbitration. Only the Union or the Department can refer a grievance to arbitration.

\* \* \* \*

## **ARTICLE 45 – DUES WITHHOLDING**

### **Section 1 – Eligibility – Bargaining Unit Employees**

Any bargaining unit employee may have dues deducted through payroll deductions. Such deductions will be discontinued only when the employee leaves the unit of recognition, ceases to be a member in good standing of AFGE, or submits a timely revocation form under the procedures of this article.

### **Section 2 – Union Responsibilities for Bargaining Unit Employees**

A. The Union agrees to inform the Department, in writing, of the following:

1. The dues amount(s) or changes in the dues amount(s)
2. The names of the local union officials responsible for certifying each employee's authorization form, the amount of dues to be withheld, and changes in allotments; and,

## BACKGROUND

At the Convention held November of 2016, the AFGE National VA Council requested to raise per capita union dues by \$1.95 per pay period. Instead, the five hundred (500) members representing every Veterans Affairs (VA) local across the nation including Local 2338, agreed to increase the per capita dues per pay period by \$1.50 which was adopted and passed. In a Memorandum issued by Local Union President Kevin Ellis dated February 23, 2017 directed to a Katina Dudley, Ellis explained that when a per capita tax is raised, local unions are required to raise the per capita tax by the same amount. Ellis further explained that the per capita dues per pay period had not been raised since 2012 and that increasing the per capita dues by the approved \$1.50 would bring the per pay period dues total to \$17.25, noting this total was still one of, if not the lowest dues rate in the nation (Un.Ex.4).

Preceding issuance of the February 23, 2017 Memorandum, by email dated January 9, 2017, Local Union President Ellis pursuant to the provisions of Article 45, Section 5 of the Master Collective Bargaining Agreement (Jt.Ex.5), notified the Poplar Bluff Payroll Department of the change in per capita dues to be withheld from the then \$15.75 per pay period to the increased per capita dues to be withheld of \$17.25 per pay period. In noting that Section 5 does not identify by name the "appropriate department official" who needs to be notified of the dues increase, Ellis testified that during his six plus (6+) years as President of Local 2338, this was the second time the per capita dues per pay period had been increased and that when it occurred the first time he was advised by Michael Crafton of the Human Resources Department not to send notification to Human Resources but to send the notification of the dues increase to the Finance Department. Ellis related he followed Crafton's advice and without encountering any problem, the dues increase was processed in a timely manner as provided for by the provisions set forth in Section 5 of Article 45 – Dues Withholding (Jt.Ex.5). Ellis related that with regard to this second increase in Union dues, he followed the same procedure he followed making notification of the first dues increase only this time due to bureaucratic inertia as reflected by the numerous exchange of emails set forth in the preceding

## CONTENTIONS

### UNION'S POSITION:

In its post-hearing brief incorporated in pertinent part herein as Appendix A, the Arbitrator acknowledges all argument advanced by the Union central to the issue as stated on page 3 of this Opinion and Award, to wit: Did the Agency violate the Master Collective Bargaining Agreement (Jt.Ex.5) when it failed to increase the amount deducted for dues from Union members as required by applicable provisions of Article 45 of the Agreement?

### AGENCY'S POSITION:

As indicated elsewhere above, at the conclusion of the February 1, 2018 hearing, the Parties agreed to submit post-hearing briefs both electronically by email attachment and by United States Mail post-marked on or before March 5, 2018. One week after the conclusion of the hearing day, the Arbitrator emailed the advocates, Attorney Hughes for the Union and Smith for the Agency summarizing the agreed upon closing arrangements. Subsequently, the Union requested an extension of one week for filing its post-hearing brief which request was not opposed by the Agency. Accordingly, the Arbitrator granted the Union's request. As indicated elsewhere above, the Union's electronic copy of its post-hearing brief was received on March 13, 2018 and the paper copy of the brief was received by United States Mail on March 17, 2018. On March 22, 2018, Local Union President Ellis sent an email to the Arbitrator with a copy to Smith wherein he noted the Union had yet to receive the Agency's post-hearing brief ( which was, by mutual agreement to be interchanged by the Arbitrator electronically by email attachment ) and also apprised the Arbitrator the Union expected there would be no filing of rebuttal briefs. On March 23, 2018, the Arbitrator emailed Smith apprising he had received the Union's post-hearing brief electronically on March 13, 2018 and by United States Mail on March 17, 2018 and requested Smith to inform him as to the status of the submission of the Agency's post-hearing brief. Smith never responded to

## **AWARD**

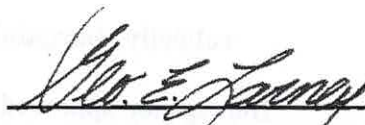
The Arbitrator finds, based on the whole of the written record and witness testimony and, as set forth in the preceding Opinion section of this Opinion and Award, that the Agency did violate applicable provisions of Article 45 of the 2011 Collective Bargaining Agreement (Jt.Ex.5), when it failed to timely process and implement the increase in per capita Union dues per pay period from \$15.75 to \$17.25.

Accordingly, the Arbitrator adopts the Union's remedy as set forth on page 9 of its post-hearing brief reproduced as Appendix A attached herein as follows:

1. The Agency is to pay the Local Union 2338, the monetary sum of five thousand one hundred twelve (\$ 5,112.00) dollars as reimbursement for dues the Union would have received had the Agency timely processed and implemented the increase in per capita dues per pay period in accord with the provisions set forth in Article 45, Section 5 of the 2011 Master Collective Bargaining Agreement.
2. In accord with 5 USC 5596, the Back Pay Act, the Agency is to reimburse the Union the monetary sum covering reasonable attorney fees incurred by the Union post the conclusion of the hearing and any associated additional fees.

Additionally, the Parties are to pay an equal share of the Arbitrator's fees & expenses incurred as set forth in his invoice.

## **GRIEVANCE SUSTAINED**

  
George Edward Larney  
Arbitrator

June 5, 2018

According to Article 45, the due increase should have been processed on the next pay period. This is a clear contractual violation admitted by the agency. In fact, the Agency did not respond to the Union's request for more than three months. The union is entitled to all dues missed as a result of this admitted mistake.

**B. The Union requested a due increase from the Agency in January**

At any time there is a change in dues structure, the local will send a memorandum to the appropriate Department official noting the amount of the change. The memorandum must be signed by one of the local union officials designated to certify dues withholding forms. Article 45 § 5.

**1. A designated union official sent an email to the appropriate Department official noting the amount of the change in dues**

The local will send a memorandum to the appropriate department official when requesting a change in dues noting the amount. Article 45 § 5. Here, Kevin Ellis, the Union President, sent an email to the Finance and Payroll department of the Poplar Bluff VA on January 9, 2017. Joint Exhibit 1. Kevin Ellis has served as president for the local for six years, since November 2011. During his tenure as president, he has previously requested a due increase. For the first due increase he requested, Kevin was told by an Human Resources official that correct Department to send a request for due increase should be to the Finance and Payroll department. On the prior occasion, the due increase was promptly processed. Here, Kevin Ellis sent a request for an increase in dues to the same department he had been instructed to previously. Unfortunately, the increase was not processed until July 8, 2017, nearly six months after the request was made. As Union President, it is clear that Kevin is a designated union official with the authority to request an increase in union dues. Also, the email sent by Kevin

Deckard then forwarded the request to Donna Goode. Her official title is Supervisory Program Specialist, Financial Payroll Service in the Financial Services Center. *Id.* When Mickey made this request, again, he included the finance and payroll department. *Id.* Donna Goode did not respond to the request for due increase for another three months and did not do so until Kristy Williams, the Chief Financial Officer, emailed her. *Id.* Donna then emailed Karen Moore, a Management Analyst Financial Payroll Service in the Financial Service Center to check on the status of the due increase. *Id.* Again, the payroll and finance department was included on the email. *Id.*

Based upon how this request was processed, albeit late, it seems as if the correct department to contact is payroll and finance. It only makes sense that this department be the appropriate department because the dues will be deducted from the union member's payroll checks. This request was made on multiple occasions and ignored by the Agency. The Union has been harmed and is owed all dues that should have been deducted starting from the second pay period in January. The approximate amount owed to the union is \$4,986.00 Therefore, this contract dispute should be decided in favor of the union.

The contract states the dues amount will be increased by the start of the next pay period January 9 of 2017 was part of pay. One which means the dues increase should've been effective on pay period to however the agency did not create or increase the dues amount anticipate. 13 which means there were 12 pay periods in which the dues amount were not increased the breakdown is as the follows you can in addition join Exhibit 3 shows 31 members not having the dues amount deducted. Therefore the agency how's the union \$4986 in back pay through their value to process increase dues the map

*the union for the lost  $\leq$  dues  $\geq$  without deducting the \$35 from the employee's pay. The agency argued that it didn't have the authority to reimburse the union without deducting the  $\leq$  dues  $\geq$  from the employee.*

*The arbitrator observed that because the agency believed it wasn't authorized to pay the  $\leq$  dues  $\geq$  directly, for nearly a year it took no action. However, the arbitrator stated, by law and the agreement, the agency had a "fundamental obligation" to collect the employee's  $\leq$  dues  $\geq$  and forward them to the union. If the agency believed that it wasn't authorized to pay the  $\leq$  dues  $\geq$  without collecting them, it should've collected the  $\leq$  dues  $\geq$  retroactively, the arbitrator wrote. After all, the employee expected that the  $\leq$  dues  $\geq$  would be deducted, the arbitrator noted. The arbitrator ordered the agency to pay the union \$35 in  $\leq$  dues, without deducting them from the worker's pay.*

#### **Agency must pay union for dues deduction missteps**

**CASE FILE:** *AFGE, Local 3955 and Federal Bureau of Prisons, 111 LRP 13462 (Fed. Arb. 12/31/10).*

**Ruling:** *After finding the grievance arbitrable, arbitrator Richard Fincher issued a split decision. Finding some violations on the agency's part, he ordered the agency to reimburse the union for lost monies resulting from the agency's failure to properly manage union  $\leq$  dues deductions  $\geq$ .*

**What it means:** *The arbitrator found the agency repudiated a past practice by which it implemented a multi-tiered dues structure for union members. He also concluded that the agency mishandled dues deduction and dues revocation forms.*

*found that the agency failed to timely submit a dues revocation form to the union for several other employees and ordered reimbursement for any proven losses.*

*Finally, the arbitrator concluded that the agency did not violate the agreement or statute in its handling of a union request for information.*

### **CONCLUSION**

The Agency violated Article 45 of the collective bargaining agreement and 5 USC 5596 Back Pay Act. Therefore, the union requests the following relief:

1. Five Thousand One Hundred Twelve Dollars (\$5,112.00) in dues the union would have received if processed according to the provisions outlined in the collective bargaining agreement.
2. Reasonable attorney fees at the conclusion of the proceedings, which may include additional fees for rebuttal or exception filings.

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