



American Federation of
Government Employees

Memorandum

Grievance on behalf of Attorneys at the Board of Veterans' Appeals

Dated: April 24, 2023

To: Christopher Santoro, Senior Deputy Vice Chairman, Board of Veterans' Appeals
(Board), Department of Veterans Affairs (VA, Agency, Department)

Re: Changes to the Domestic Employee Teleworking Overseas (DETO) program without
notice to the American Federation of Government Employees, Local 17, AFL-CIO, and
the opportunity to bargain

From: Marla Woodarek, Esq., Steward, and Calanit Kedem, Esq., First Vice President,
American Federation of Government Employees, Local 17, AFL-CIO (Union)

I. Statement of the Grievance

This grievance involves the Agency's violation of both the Federal Service Labor-Management Relations Statute ("the Statute") and the parties' collective bargaining agreement based on the Agency unilaterally terminating a policy of allowing employees to work overseas during their spouses' deployment with the military or the State Department. This policy change constitutes an unfair labor practice because it occurred without notice to the Union and therefore frustrates the Union's ability to bargain over procedures and appropriate arrangements. The grievance is being initiated at Step 3 because the requested relief and corrective action are beyond the authority of any step 1 or step 2 deciding official. *See Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011).*

The DETO¹ program is offered to spouses of military and Foreign Service officers to continue their federal careers after being stationed overseas. In 2020, under former Board Chairman Cheryl Manson, the Board began allowing military and Foreign Service spouses to work overseas through the DETO program. This allowed employees to maintain their family units and salary while their spouses take their respective stations overseas. The Board's DETO program has successfully retained high-performing attorneys who have fulfilled the Board's mission from far off principalities across the world. Recently, however, the Union learned that senior management officials had communicated to Veterans Law Judges (VLJs) that the Board was changing its internal policy of allowing employees to participate in the Agency's DETO program.² This occurred without notice to the Union.

Since Chairman Mason spearheaded the Board's DETO program, President Biden has released "A Report of the Joining Forces of Interagency Policy Committee" titled *Strengthening America's Military Families*, released in September 2021. The report reflects the "commitment of the Biden-Harris Administration to a government-wide effort that will advance the dignity, equity, opportunity, and prosperity of the families, caregivers, and survivors of our service members and veterans."³ One such priority of the Administration is to increase economic opportunity and mobility for military families, with a goal of "ensur[ing] that the federal government is an employer of choice for military spouses."⁴ One of the Harris-Biden Administration's commitments to that end is that "the Department of State will share the Domestic Employees Teleworking Overseas policy and procedures with other federal agencies to encourage efforts to retain skilled workers and keep military and veteran families together, even when overseas military assignments occur."⁵ The Biden-Harris Administration has also directed the federal government, to include VA, as the nation's largest employer, to be a model for diversity, equity, inclusion, and accessibility, and recognized that military spouses are an underserved community.⁶

Unfortunately, Board Chairman Areizaga-Soto has unilaterally decided to end the Board's participation in the DETO program for decision-writing attorneys. Rather than notify the Union, we learned of the new policy through current participants in the DETO program. Current participants were notified by management that there would be "no further support for recommending approval for any additional DETO requests beyond any currently pending requests." One impacted employee was even informed that "the Chairman does not support DETO agreements." It is unclear what, if any, rationale the Chairman has for making such a policy change. This change would not only uproot current Board-employed military spouses and their families residing overseas, but also place future Board-employed military spouses in the tough position of choosing to break-up their family unit to retain employment or maintain their

¹ Domestic Employees Telework Overseas.

² See VA Form 10228, Domestic Employee Teleworking Overseas (DETO) Reference Guide and Application, dated Feb. 2023.

³ "A Report of the Joining Forces of Interagency Policy Committee" The White House, February 2023, http://whitehouse.gov/wp-content/uploads/2021/09/Strengthening_Americas_Military_Families.pdf, at 1.

⁴ *Id.* at 9, 11.

⁵ *Id.* at 12.

⁶ "Executive Order on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce" The White House, June 25, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/25/executive-order-on-diversity-equity-inclusion-and-accessibility-in-the-federal-workforce>

family unit and surrender their position at the Board. These are two decisions the Biden-Harris Administration do not want military spouses to ever have to make.

The Union filed a Demand to Bargain on April 20, 2023, requesting that the Agency cease and desist from making any changes to the DETO policy before all bargaining obligation have been met. Senior Deputy Vice Chairman Santoro declined the Union's request for a briefing, indicating that the Board had not changed its DETO policy. We do not believe him. Indeed, the Board has a troubling history of bargaining in bad faith or blatantly bypassing the Union and dealing directly with employees.⁷ And while newly-appointed Chairman Areizaga-Soto claims to support labor – both in his current position as the Board's Chairman and when he ran for a Virginia state senate seat in 2011 – his actions do not support his claims.

II. Statement of Violation

The Union asserts the right to amend this Grievance if violations of any other applicable sections of the contract, laws, or regulations are discovered. By failing the notify the Union of the Board's new DETO policy, the Department violated, and continues to violate, the following:

- Master Agreement, Art 1 – Recognition and Coverage;
- Master Agreement, Article 2 – Governing Laws and Regulations;
- Master Agreement, Article 47 – Mid-term Bargaining;
- Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7114 (a)(1) – Exclusive Representative
- Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7116(a)(1), (5), and (8) Bypass and Other Unfair Labor Practices;
- 38 CFR § 0.601: VA's Core Values are Integrity, Commitment, Advocacy, Respect, and Excellence (Together, the first letters of the Core Values spell "I CARE"); and,
- Any other relevant articles, laws, regulations, customs, and past practices not herein specified.

III. Statement of Remedy

To remedy the above situation, the Union asks that the Department agree to the following:

- Cease and desist from implementing the new DETO policy;
- Fulfill all bargaining obligations under Article 47 of the Master Agreement and the Statute;
- Issue a notice posting to all bargaining unit employees represented by Local 17 acknowledging its obligations to the Union under the Federal Service Labor-Management Relations Statute;

⁷ See, e.g., VA (Richmond VA Medical Center) and AFGE Local 2145, 68 F.L.R.A. 882 (2015) (upholding an Administrative Law Judge's finding of bypass when the agency dealt directly with bargaining unit employees); see also 5 U.S.C. §§ 7114(a)(1), 7116(a)(1) and (5) and Master Agreement, Art. 1, Sec. 3.A.

- Agree to any other remedies appropriate in this matter to make the impacted employees and the Union whole.⁸

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 me at marla.woodarek@va.gov.

⁸ Arbitrators are empowered to order the same remedies as the FLRA in arbitrating a grievance alleging the commission of an unfair labor practice. *Federal Deposit Insurance Corporation*, 48 FLRA 566 (1993).