



**CONGRESSIONAL
TESTIMONY**

STATEMENT FOR THE RECORD

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

PROVIDED TO THE

HOUSE COMMITTEE ON VETERANS' AFFAIRS

OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

OVERSIGHT HEARING ON

LEARNING FROM VA WHISTLEBLOWERS

JUNE 25, 2019

Chairman Pappas, Ranking Member Bergman, and Members of the Subcommittee, the American Federation of Government Employees, AFL-CIO and its National Veterans Affairs (VA) Council (AFGE) appreciate the opportunity to submit a statement for the record on VA whistleblowers. AFGE represents more than 700,000 federal and District of Columbia government employees, 260,000 of whom are dedicated VA employees including more than 100,000 veterans.

Over the past decade, AFGE members have been among the prominent VA whistleblowers who have risked their own jobs to protect veterans from harm's way by reporting gross mismanagement. In each case, AFGE had to step in when management retaliated against the whistleblowers.

In 2014, at the Phoenix VA Medical Center (VAMC), an emergency room physician and patient scheduler represented by AFGE reported severe short staffing and wait list gaming. The same year, at the Tomah, Wisconsin VAMC, the local president and a psychologist reported improper opiate prescribing practices. In 2012, when plumbers at the Pittsburgh VAMC were asked by management to cover up a deadly legionella outbreak, their AFGE local president testified before this Committee and waged a long battle to ensure workplace and patient safety. The 2011 Senate testimony of a VA psychologist at the Wilmington, Delaware VAMC led to additional hiring of mental health professionals throughout the Veterans Health Administration (VHA).

Every day, other VA employees whose names may not appear in the press or the Congressional record take the brave step of speaking up for veterans by voicing concerns about mismanagement they witness on the front lines of VA hospitals and clinics, benefits offices and other VA facilities.

Most recently, VA front line employees have reached out to their AFGE representatives to report their observations about the adverse impact of the Mission Act including contracting out of entire service lines, laying off part-time physicians, refusals to fill vacancies and errors and backlogs in the consult process.

What all these courageous VA employees have in common is their reliance on critical statutory and contractual rights that allow them to report mismanagement knowing that their union can help them fight back against unjustified terminations, demotions, suspensions and other forms of retaliation.

For example, if a medical technician observes and reports that medical equipment is not being properly sterilized, his supervisor may retaliate with an unjustified 30-day suspension. Under the current contract between AFGE and the agency, he can set up a meeting to consult with his union representative and then go to a grievance meeting with union representation to challenge the suspension. The employee's union representative will also advise him of his rights under the Whistleblower Protection Enhancement Act of 2012 (WPEA) to seek whistleblower status with the Office of Special Counsel. (AFGE does not recommend that union representatives refer

employees to the VA's Office of Accountability and Whistleblower Protection because of longstanding concerns about the way it conducts investigations.)

Sadly, the contractual rights of VA whistleblowers and other employee advocates are under attack by the Agency's bad faith bargaining with AFGE over renewal of our collective bargaining agreement. In addition, the Department of Veterans Affairs Accountability and Whistleblower Protection Act of 2017 significantly eroded due process and collective bargaining rights that are vital to whistleblowers and every employee who is perceived as a threat by management.

Current AFGE-VA Contract Negotiations

The VA's extreme contract proposal would strike the section of the VA contract that provides core rights to whistleblowers:

Section 10 - Whistle-Blower Protection Act

Consistent with the Whistleblower Protection Act, currently codified at 5 USC 2302(B)(8), employees shall be protected against reprisal of any nature for the disclosure of information not prohibited by law or Executive Order which the employee reasonably believes evidences a violation of law, rule or regulation, or evidences gross mismanagement, a gross waste of funds, an abuse of authority, or substantial and specific danger to public or employee health or safety. The Department will annually notify employees about their rights under the Whistle Blower Protection Act. If training on the Whistle Blower Protection Act is required, employees will be provided duty time to complete it.

In addition, the proposal would eliminate the ability of every VA employee to pursue his contract rights through the grievance process, the only accessible, affordable and efficient way for most employees to enforce their rights.

The VA has engaged in bad faith bargaining at every stage of the negotiations. For example, it has failed to answer any information requests to date, refused to answer questions about their proposals at the table, swapped out its entire bargaining team, and brought in an outside union-busting team. AFGE has filed a National Grievance in response to the wide range of tactics the VA is using to force the contract to the Federal Service Impasses Panel where a panel appointed entirely by the Administration is likely to issue a draconian contract similar to those imposed on other agencies.

(ATTACHMENT A)

AFGE thanks Chairman Takano, Subcommittee Chairman Pappas and other members of the Committee for signing a letter asking Secretary Wilkie to bargain in good faith with AFGE. (ATTACHMENT B)

Impact of the Accountability Act on Rights of VA Whistleblowers

The Accountability Act of 2017 severely weakened the due process and collective bargaining rights that protected employees who report mismanagement as well as other employees facing unjust terminations and other forms of discipline. The Act shortened the amount of time an employee has to file a response to a proposed termination, demotion or suspension and file appeals with the Merit Systems Protection Board (MSPB) or negotiated grievance procedures. It moved employees much closer to “at will” status by applying a much lower standard of evidence that managers have to meet to carry out terminations and other adverse actions. It also prohibits the MSPB from lowering the agency penalty, which has encouraged the agency to propose unreasonable terminations at the outset without providing any opportunity for improvement. These changes also override strong protections that were already agreed to in the existing VA-AFGE contract.

An employee who knows he or she can be fired more easily under the Accountability Act is far more cautious about taking the brave step of speaking up against mismanagement. Knowing that he will have very little time to access the evidence and witnesses that he needs to prepare a response to a proposed termination and knowing that the agency has to provide only minimal evidence of misconduct or poor performance will factor heavily into the decision of whether to come forward with a report of management wrongdoing.

Conclusion

AFGE thanks the Subcommittee for this opportunity to share our views on statutory and contractual protections for whistleblowers and other employee advocates. We urge the Subcommittee to demand that the agency negotiate in good faith over the new VA-AFGE contract to ensure that whistleblowers have adequate protections. We also ask for your support in enacting legislation to reverse the harmful provisions of the Accountability Act and that ensures that VA employees have a clear right to Performance Improvement Plans and the ability to challenge unreasonable penalties before the MSPB.

Thank you for considering the views of AFGE. We look forward to working with the Subcommittee and other stakeholders to restore meaningful protections for VA employees who speak up for veterans.