Veterans Health Services
and Research Administration
Washington DC 20420

Department of
Veterans Affairs

JUL 10 1992

In Reply Refer to:

Mr. A. G. Branch
Director
VA Medical Center
Fayetteville, NC 28301

Dear Mr. Branch:

I am responding to the issues raised in the enclosed grievance and request for negotiations concerning the reassignment of registered nurses, submitted by the American Federation of Government Employees.

Under 38 USC Section 7422, any matter affecting health care personnel in positions described in 38 USC 7421(b) and concerning or arising out of professional conduct or competence, including direct patient care and clinical competence, is non-negotiable and not grievable. The law authorizes the Secretary, or delegatee, to determine the negotiability or grievability of any matter arising under its provisions. The Secretary has delegated to my office the authority to make any such determinations, which are not subject to administrative review under the law.

Acting pursuant to this authority, I have determined that the reassignment of health care personnel described in 38 USC 7421(b) is fundamental to establishing the level and quality of patient care to be provided by the Department of Veterans Affairs. Determining staffing requirements concerns overall competency of the staff at each facility and their ability to perform without compromising patient care, given the staff available. Consequently, I believe any matter relating to the reassignment of such health care personnel at any VA facility is related to the professional competence or conduct of those employees. Accordingly, the grievance concerning the reassignment is not grievable nor is the matter negotiable.

Sincerely yours,

James W. Holsinger Jr.

James W. Holsinger Jr., M.D.
Chief Medical Director

Enclosures

Title 38 Grievability and Negotiability
Decision Paper

FACTS:

On November 17, 1991, Angela Riddick, RN (Vice President of AFGE's Professional Unit) was transferred from one nursing unit to another. The union in their grievance stated that the transfer was for reprisal and retaliation.

Management responded at Step 2 that the transfer was not made for the reasons alleged by the union but rather Ms. Riddick's incompatible relationship with her supervisor which in turn was adversely affecting treatment on her psychiatric unit.

The Director in his Step 3 response denies that the reassignment was a reprisal action for union activities and cites communication problems between the grievant and her supervisor. The union also contends that the area of reassignment is less desirable than her former assignment. An additional allegation stated that the grievant's new area did not relate to her field of expertise. The Director states in his response that she is qualified to work in the area assigned which is not considered an undesirable area.

Subsequently the union also requested to bargain on the adverse impact of reassigning nursing personnel.

Management responded that the situation involved the temporary reassignment of registered nurses in the Intensive Care Unit to other units due to staffing shortages. Management also responded that the matter was covered by P.L. 102-40 and was not grievable/negotiable.

AFGE has requested the following remedies:

(1) Ms. Riddick be placed back in her respective area;
(2) No other reprisal, retaliation, discrimination or other acts be taken against Ms. Riddick for her union activities;
(3) Negotiate the adverse impact of reassigning personnel.

Issue:

Since AFGE has filed a grievance and a request to negotiate on the assignment of nurses it is necessary for a decision to be made by the Chief Medical Director regarding whether these matters are grievable and/or negotiable.

Discussion:

Under the "Department of Veterans Affairs Labor Relations Improvement Act of 1991" (the Act), persons hired pursuant to Title 38, United States Code, have the right to engage in collective bargaining pursuant to the Federal Labor Management Relations Statute, except as to any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation. 38 U.S.C. sec. 7422.

The Act also authorizes the Secretary of Veterans Affairs, or designee, to decide any issue of whether a matter or question concerns or arises from any of these issues. The Secretary's decision is not subject to collective bargaining or subject to review by any other agency. Id.

Professional conduct and competence includes the scope, nature and manner of performance of duties. The VA is responsible for the delivery and direction of the conduct of professional duties and services by Title 38 employees. This includes not only staffing but assignment of duties and how a nurse performs an assignment. It is clear from AFGE's requested remedies both in regard to the grievance and the request to negotiate that the issue in question concerns matters which arise out of professional conduct or competence. Consequently, since both the grievance and the request to negotiate pertain to assignments of nurses, each raises "a matter or question concerning or arising out of professional conduct or competency" under Title 38. Accordingly, the issues are not grievable or negotiable under the Act.

Recommendation:

We recommend that the Chief Medical Director determine that both the grievance and the request to negotiate concern or arise out of professional conduct or competency under Title 38, United States Code.

Approved/~~Disapproved~~: James W. Holsinger, Jr. JUL 10 1992

James W. Holsinger, Jr., M.D. Date