DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Services and Research Administration
Washington DC 20420

JAN 04 1993

In Reply Refer To:

Mr. Allan S. Goss
Director (00)
VA Medical Center
100 Emancipation Road
Hampton, VA 23667

Dear Mr. Goss:

I am responding to the issues raised concerning the enclosed Unfair Labor Practice (ULP) charge filed by the American Federation of Government Employees (AFGE) local union.

Under 38 USC Section 7422, any matter affecting registered nurses hired pursuant to Title 38 concerning or arising out of professional conduct or competence is outside the scope of collective bargaining and is not subject to review by any other agency. The law authorizes the Secretary, or delegatee, to determine the grievability of any question 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 this ULP, concerning an employee's right to union representation in a Quality Assurance investigation, involves professional conduct or competence. Such investigations are conducted to improve the quality of medical care and the utilization of health care resources. Both purposes relate to direct patient care and clinical competence. I believe any matter relating to union representation and the role of any representative at such a proceeding is related to professional competence or conduct and direct patient care.

Accordingly, the issue raised in this ULP is outside the scope of collective bargaining under the "Department of Veterans Affairs Labor Relations Improvement Act of 1991" because it concerns a matter or question arising out of professional competence and conduct and affects direct patient care.

Sincerely yours,

James W. Holsinger, Jr., M.D.
Under Secretary for Health

Enclosure

S/108
1/4/93

Briefing Slip

PURPOSE: Decision paper and letter to the Director at the VA Medical Center, Hampton, Virginia, concerning an unfair labor practice charge (ULP) (TAB A), submitted by the American Federation of Government Employees (AFGE) local union, and a Complaint and Notice of Hearing issued by the Federal Labor Relations Authority (FLRA) (TAB B).

DISCUSSION: P.L. 102-40 (TAB C) gives Title 38 employees and their exclusive labor organization representative the right to engage in collective bargaining under Federal employee labor laws, 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. The Act also authorizes the Secretary of Veterans Affairs, or designee, to determine whether a matter or question concerns any of the above issues. The Chief Medical Director has been delegated authority to decide these matters (TAB D). That decision may not be reviewed by any other agency and is not subject to collective bargaining.

At the VAMC Hampton, Virginia, the AFGE local has filed an ULP related to a question of representational rights in a Quality Assurance (QA) investigation concerning a patient incident under the care of an R.N. who was being questioned.

The nurse appeared before the QA Board with the AFGE local president as her representative. The AFGE representative was not allowed to speak or otherwise participate in the inquiry, and filed the ULP over the denial of a union representative.

Since professional conduct and patient care is excluded from collective bargaining by 38 U.S.C. 7422, the union is not entitled to represent an employee in the QA process. The ULP concerns a matter or question arising out of professional conduct or competence, related to direct patient care. Accordingly, such subject is outside the scope of collective bargaining.

Similar issues, although related to a Summary Review Board, have already been reviewed by the Under Secretary for Health in two previous cases GR-12-92, VAMC Amarillo and AFGE decided August 27, 1992, and GR-13-92, VAMC Jackson and AFGE decided August 27, 1992, (TABS E & F), and been found to be outside the scope of collective bargaining under 38 U.S.C. 7422. The fact that this case involves the QA process does not distinguish it from the cited cases because the matter involved, direct patient care, concerns professional conduct and competence.

IMPLICATIONS: The decision on this matter should be consistent with previous decisions made on similar issues. We need a decision by the Under Secretary for Health as soon as possible since the Regional Director of the FLRA has issued a complaint in this case.

Title 38 Grievability
Decision Paper

FACTS:

VAMC Hampton professional bargaining unit employee Violet Taylor, R.N., appeared before a management representative conducting a Quality Assurance (QA) investigation. The purpose was to conduct an inquiry into an incident involving a patient under the care of Violet Taylor, R.N.

Ms. Taylor selected as her representative the union President, Deola Smith. Ms. Smith attended the inquiry with Ms. Taylor but was not allowed to speak or otherwise participate in the meeting.

The union filed an unfair labor practice charge (ULP) with the Federal Labor Relations Authority that subsequently resulted in the issuance of a formal complaint.

ISSUE:

The Union argues in the ULP that management has used Public Law 102-40 to improperly bar the union from its statutory right to represent a bargaining unit employee.

Discussion:

Under Public Law 102-40, 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 USC 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.

This case presents a similar issue previously decided by the Under Secretary for Health in GR-12-92 (VAMC Amarillo and NFFE, decided August 27, 1992) and GR-13-92 (VAMC Jackson and NFFE, decided August 27, 1992). In those cases the Under Secretary determined that the right to union representation at a Summary Review Board involved professional conduct or competence and the peer review process. This case concerns union representation at a QA Investigation. The fact that this case involves the QA process does not distinguish it from the cited cases because the matter involves direct patient care and concerns professional conduct and competence, and therefore, is excluded from collective bargaining. Accordingly, the issue raised in this current unfair labor practice is outside the scope of collective bargaining under the Act because it concerns a matter or question arising out of professional competence and conduct which is related to direct patient care.

RECOMMENDATION:

We recommend that the Under Secretary for Health determine that the issue of union representation of an employee in a QA investigation concerns or arises out of professional conduct or competence as well as peer review under Title 38, United States Code and is outside the scope of collective bargaining.

Approve Recommendation ✓

Disapprove Recommendation _____

JAN 04 1993
Date

James W. Holsinger Jr., M.D.
Under Secretary for Health