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

MAY 1 6 1994

Director
VA Medical Center

In Reply Refer To:

Dear

I am responding to issues raised in a grievance concerning the determination of a proficiency rating filed by American Federation of Government Employees (AFGE) on behalf of

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 make the determination 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 grievance concerning the determination of a proficiency rating involves professional conduct or competence and peer review. Determining the competency of the staff at a facility and their ability to perform without compromising patient care concerns professional competence or conduct and peer review.

Accordingly, the issue raised in this grievance with respect to dissatisfaction 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 peer review.

Sincerely yours,

John T. Farrar

John T. Farrar, M.D.
Acting Under Secretary for Health

Enclosure

Title 38 Grievance
Decision Paper

Facts:
At VAMC the American Federation of Government Employees (AFGE) filed a grievance concerning the proficiency rating of RN. It was alleged that was not rated fairly and equitably in determining her rating of satisfactory. The grievance alleges that in the previous year the nurse had received a highly satisfactory rating and there has been no significant change. The union alleges that the difference in the rating is due to union activities. She is the professional Vice-President of the union local.

At the various steps of the grievance procedure management has replied that union activities did not play a role in the evaluation. Additionally management replied that the annual proficiency rating was fair and equitable and was based not only on the overall evaluation by the Head Nurses of the units where had worked as a float nurse but also on the evaluation of her immediate supervisor. Management also contended that the manner in which the rating was done was also fair and equitable although the union alleges that the peer review process was not utilized.

Issue:
Whether the proficiency rating in the above matter is covered by Public Law 102-40.

Discussion:
Under Public Law 102-40, the "Department of Veterans Affairs Labor Relations Improvement Act of 1991" (the Act), employees 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.

Professional conduct and competence include matters dealing with a nurse's performance. The proficiency rating also concerns peer review. In the instant case the proficiency rating although lower than the previous year was based upon the evaluation of her immediate supervisor and those of Head Nurses on units where the grievant had worked as a float nurse. Therefore, this case involves professional conduct and competence and concerns direct patient care. Accordingly, the issue raised 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 a proficiency rating for a nurse is a matter which concerns or arises out of professional conduct or competence under Title 38, United States Code and is outside the scope of collective bargaining.

Approve Recommendation ✓

Disapprove Recommendation _____

John T. Farrar

John T. Farrar, M.D.
Acting Under Secretary for Health

MAY 16 1994
Date