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

JUL 07 1994

In Reply Refer To:

Mr. Gary M. DeGasta
Director (OO)
VA Medical & Regional Office Center
White River Junction, VT 05009

Dear Mr. DeGasta:

I am responding to the issue raised concerning the enclosed Unfair Labor Practice Charge (ULP) filed by the local unit of the American Federation of Government Employees.

Under 38 USC Section 7422, any matter affecting registered nurses hired pursuant to Title 38 concerning or arising out of professional conduct or competence, (including direct patient care and clinical competence), peer review, or the establishment, determination or adjustment of employee compensation 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 ULP, concerning failure to bargain on management's decision to reduce nurse staffing in the Operating Room and effect a reassignment to another ward, directly affects patient care. Determining the number and placement of staff nurses is fundamental to establishing the level of patient care to be provided by the VA.

Mr. Gary M. DeGasta
White River Junction, VT

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Accordingly, the issue raised in this ULP concerning a reduction in staffing in the Operating Room and placement of a nurse in another patient care area 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 direct patient care.

Sincerely yours,

John T. Farrar

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

Enclosure

Title 38 Unfair Labor Practice
Decision Paper

Facts: At VAMC White River Junction, the local unit of the American Federation of Government Employees (AFGE) filed an unfair labor practice charge alleging the failure to bargain the impact and implementation of a management decision to reduce nurse staffing in the operating room and transfer the position to another patient care area.

On November 17, 1993, the union was notified that the Chief of Nursing Service intended to reduce the overall ceiling for nurses in the operating room by .5 FTEE and utilize the position in another clinical area through a reassignment. On November 29, the union responded by asking for additional information and requesting to bargain on the impact and implementation. On December 1, 1993, the union president was informed by a memorandum from the Chief of Human Resources Management that the RN staff reduction and subsequent placement were staffing determinations based on patient care needs and as such impacted on direct patient care, a matter which under the Labor Management Improvement Act of 1991 is outside the scope of collective bargaining. On March 1, 1994, the union filed a unfair labor practice charge, which alleged failure to bargain the change in the operating room staffing. (Also alleged is a separate issue that the union was not notified of their right to be present at a formal meeting held by nursing supervisors in the Nursing Home Care unit on February 22, 1994).

Issue: Whether a reduction in nurse staffing in the operating room and subsequent reassignment of the ceiling and the employee to another clinical area based on patient care needs 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 statute, except as to any matter or question concerning or arising out of (1) professional competence or conduct, (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 arises from any of these issues. The Secretary's decision is not subject to collective bargaining or subject to review by any other agency.

At the VAMC, the AFGE local has filed an unfair labor practice charge alleging that management failed to negotiate the impact and implementation of a decision to reduce nurse staffing in the operating room and reassign a nurse to another clinical area. The reduction and reassignment was done based on budgetary and staffing restraints. Staffing and assignments of registered nurses based on clinical needs directly impact on the quality of patient care.

This case presents the issue of whether management, based on budgetary and staffing needs, can reduce nurse staffing in the operating room and reassign personnel to other clinical areas.

Similar issues have already been decided by the Chief Medical Director (Under Secretary for Health) in GR-07-92 (VAMC Fayetteville, NC and the AFGE decided July 10, 1992). (TAB D) In GR-07-92 the Chief Medical Director determined that nurse unit staffing and the reassignment of a nurse, were matters that concerned professional conduct and competency under Title 38 and were both nonnegotiable and nongrievable under the Act.

Recommendation: We recommend that the Under Secretary for Health determine that failure to bargain the impact and implementation of a reduction of nurse staffing in the operating room and subsequent reassignment of personnel to another clinical area, concerns direct patient care 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

7-6-94
Date