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

NOV 24 1992

In Reply Refer To:

Mr. James Cuer
Director (00)
VA Medical Center
Leavenworth, KS 66048

Dear Mr. Cuer:

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

Under 38 USC Section 7422, any matter affecting registered nurses hired pursuant to Title 38 and concerning or arising out of professional conduct or competence is outside of 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 the right to represent a nurse at a Summary Review Board, involves professional conduct or competence and the peer review process. The Summary Review Board is the principal component of the peer review process utilized to determine the competence of a probationary registered nurse. Consequently, I believe any matter relating to the Summary Review Board including the right to union representation and the role of any representative at such a proceeding is related to professional competence or conduct and the peer review process. 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 peer review.

Sincerely yours,

James W. Holsinger Jr.

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

Enclosure

Title 38 Grievability
Decision Paper

Facts:

VAMC Leavenworth professional bargaining unit employee Arlene Wightman, R.N., was the subject of a Summary Probationary Review Board convened to determine whether to retain or discharge her based on allegations of patient abuse during the probationary period.

When the employee requested to appear before the Board, she requested Union representation by the NFFE local. Management refused to allow union representation.

Issue:

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

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 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 the same issue already decided by the Chief Medical Director 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 Chief Medical Director determined that the right to representation at a Summary Review Board involved professional conduct or competence and the peer review process. Accordingly, the issue raised in the current 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 peer review.

Recommendation:

We recommend that the Chief Medical Director determine that the ULP concerns or arises out of professional conduct or competency as well as peer review under Title 38, United States Code and is outside the scope of collective bargaining.

Approve Recommendation ✓

~~Disapprove Recommendation~~

James W. Holsinger, Jr.

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

NOV 24 1992
Date