DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

In Reply Refer To:

AUG 24 1994

Mr. Roland E. Moore
Acting Director (00)
VA Medical Center
Brockton, MA. 02401

Dear Mr. Moore:

I am responding to the issue raised concerning the enclosed Unfair Labor Practice charge (ULP) filed by the local unit of the National Association 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 a management decision to eliminate for nurses the overlap of the Sunday night tour of duty with the Sunday evening tour of duty and its effect on weekend premium pay, involves both direct patient care as well as employee compensation. Determining tours of duty is fundamental to establishing the level of patient care to be provided by the Department of Veterans Affairs. The elimination of the Sunday premium pay for night tour employees concerns an adjustment in employee compensation.

Mr. Roland E. Moore
Brockton, MA

2.

Accordingly, the issue raised in this ULP concerning the changing of a tour of duty and the elimination of Sunday premium pay for nurses 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 and employee compensation.

Sincerely yours,

For And In The Absence Of

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

Enclosure

Title 38 Unfair Labor Practice
Decision Paper

Facts:
At VAMC Brockton, the local unit of the National Association of Government Employees filed an unfair labor practice charge alleging the failure to bargain the impact and implementation of a management decision to eliminate for nurses the overlap (of 15 minutes) of the Sunday night tour of duty with the Sunday evening tour of duty. The elimination of the overlap would end the payment of approximately $80,000 in weekend premium pay. (TAB A)

On November 8, 1993, the union was notified that management intended to change the weekend tour. The union opposed the change and demanded that management not implement until completion of bargaining under the terms of President Clinton's Executive Order on Labor-Management partnerships. Management informed the union that the Executive Order is not applicable to Title 38 employees and in addition indicated that the tour change impacted on both direct patient care and employee compensation, matters which under the Labor Management Improvement Act of 1991 are outside the scope of collective bargaining. The tour change was implemented on January 9, 1994.

Issue:
Whether a change in a tour of duty for nurses that results in the loss of weekend premium pay 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),(TAB B) 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 arises from any of these issues. The Secretary's decision is not subject to collective bargaining or subject to review by any other agency. The Under Secretary for Health has been delegated authority to decide these matters. (TAB C)

This case presents the issue of whether or not management can change an established tour of duty for nurses. In the instant case management determined that elimination of a 15 minute overlap period between the Sunday evening and the Sunday night tour of duty would eliminate over $80,000 dollars in payroll costs a year, associated with the payment of weekend premium pay. Nurses available on the ward as set through scheduled tours of duty directly impact on direct patient. This case also involves employee compensation in the form of premium weekend pay being added to an employee's regular salary. Therefore, this case involves both professional conduct and competence as it relates to direct patient care, as well as employee compensation in the form of the elimination of the weekend premium pay associated with the change in the tour of duty.

Recommendation:
We recommend that the Under Secretary for Health determine that failure to bargain the impact and implementation of a change in the tour of duty scheduled for nurses that results in the loss of weekend premium pay is a matter which concerns direct patient care and employee compensation 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

AUG 24 1994
Date