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

NOV 2 6 1993

In Reply Refer To:

Mr. Archie Bourret
Director (00)
VA Medical Center
30th & Euclid Ave
Des Moines, IA 50310

Dear Mr. Bourret:

I am responding to the issue raised concerning the enclosed grievance filed by the Iowa Nurses Association.

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 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 such determinations which are not subject to administrative review under the law.

Acting pursuant to this authority, I have determined that this grievance concerning a registered nurse's shift rotation involves professional conduct or competence. Determining staffing requirements concerns overall competency of the staff at a facility and their ability to perform without compromising patient care, given the staff available. Consequently, I believe this issue relates to professional competence or conduct. Accordingly, the issue raised in this grievance 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 or conduct.

Sincerely yours,

John T. Farrar

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

Enclosure

Title 38 Grievability
Decision Paper

FACTS:

VAMC Des Moines bargaining unit employee Donna L. Walter, R.N., alleges in her grievance (TAB A) that management has violated Article V1, Hours of Duty, Paragraph D of the applicable local agreement between the Iowa Nurses Association and the Medical Center (TAB B) by rotating shifts in periods of less than six weeks. Paragraph D says in part,"the remaining nurses, assigned to in-bed units, will rotate to days, evenings and nights for periods of six weeks. "It should be noted that Article V1 Paragraph A. (Tab B) reads "The parties to this agreement recognize that: 1. proper care and treatment of patients is the primary consideration; 2. This care and treatment is continuous in nature; and 3. The Chief, Nursing Service, has the authority to prescribe tours of duty to insure adequate professional care and treatment to the patient consistent with the provisions of VA Manual MP-5, Part 11, Chapter 7 (TAB C) and DMS Supplement to MP-5, Part 11, Chapter". (TAB D). Management belives that all alterations of the six-week pattern have been necessary to provide quality care to patients and that Article VI Section A recognizes this. The Chief, Nursing Service has prepared a Declaration as to why in certain cases deviation from the six-week rotation is necessary to provide for the proper care and treatment of patients (Tab E).

ISSUE:

Since the Iowa Nurses Association has filed a grievance concerning staff nurses rotating two or more shifts per week, it is necessary for a decision to be made by the Under Secretary for Health whether this issue is grievable.

DISCUSSION:

Under the "Department of Veterans Affairs Labor Relations Improvement Act of 1991",(the ACT) (TAB F) 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 Under Secretary for Health has been delegated authority to decide these matters. (TAB G) The Secretary's decision is not subject to collective bargaining or subject to review of any other agency. Id

This case presents issues already decided by the Chief Medical Director (Under Secretary for Health) in NG-02-92 (VAMC Milwaukee and the Wisconsin Federation of Nurses & Health Professionals) decided April 28, 1992,) (Tab H) and NG-03-92 (VAMC Leavenworth, KS) and the National Federation of Federal Employees (NFFE) decided May 13, 1992. (Tab I) In NG-02-92 the Chief Medical Director determined that an article on hours of duty and scheduling was determined to be nonnegotiable because it concerned professional competence. In NG-03-92 the Chief Medical Director determined that the length of tours and how coverage is provided involves professional competence considerations. While these earlier decisions involved negotiability issues the same rationale would apply to grievability issues. Consequently this grievance raises a "matter or question concerning or arising out of professional conduct or competence" under Title 38. Accordingly, such grievance is nongrievable under the Act.

Recommendation:

We recommend that the Under Secretary for Health determine that this grievance concerns or arises out of professional conduct or competency 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

NOV 26 1993
Date