DEPARTMENT OF VETERANS AFFAIRS
UNDER SECRETARY FOR HEALTH
WASHINGTON DC 20420

NOV 27 2001

George H. Gray, Jr.
Director (00)
VA Medical Center
4300 West 7th Street
Little Rock, Arkansas 72205

Dear Mr. Gray:

I am responding to the issue raised in your June 22, 2001, memorandum concerning the local unit of the American Federation of Government Employees (AFGE). The issue pertains to a grievance that seeks weekend differential and premium pay in addition to overtime pay based on Article 51 of the AFGE Master Agreement.

I have decided, on the basis of the enclosed decision paper, that this grievance concerns or arises out of a matter or question of the establishment, determination or adjustment of employee compensation and violates the provisions of 38 U.S.C. 7453(b) and (c).

Please provide this decision to your Regional Counsel as soon as possible.

Sincerely yours,

Thomas L. Garthwaite, M.D.

Enclosure

Briefing Paper

PURPOSE: Decision paper and letter to the Director, VA Medical Center, Little Rock concerning a grievance filed by the American Federation of Government Employees (AFGE) local union.

DISCUSSION: On April 16, 2001, AFGE filed a grievance on behalf of the nurses in the Post Anesthesia Care Unit. The issue involves the failure of the medical center to pay weekend differential pay to the nurses when called in to work overtime on weekends. AFGE argues that Article 51, Section 3(B) of the VA-AFGE Master Agreement provides that nurses who are required to work overtime on weekends are entitled to premium pay even if the work is performed outside a scheduled tour of duty.

The Director and the local AFGE President have requested a decision by the Under Secretary as to whether the issue addressed in the enclosed decision paper is a matter concerning or arising out of the establishment, determination or adjustment of employee compensation.

IMPLICATIONS: None

Title 38 Decision Paper – VAMC Little Rock

FACTS

On April 6, 2001, the American Federation of Government Employees (AFGE) filed a grievance on behalf of the nurses in the Post Anesthesia Care Unit (PACU) at the Little Rock Campus of the Central Arkansas Veterans Healthcare System alleging entitlement to premium pay. Specifically, the issue involves the failure of the medical center to pay weekend differential pay to PACU nurses when called in to work overtime on weekends. The grievance was filed at Step 3 of the grievance procedure and the Associate Director provided a written response on May 22, 2001.

AFGE argues that Article 51, Section 3(B) of the VA-AFGE Master Agreement provides that PACU nurses who are required to work overtime on weekends are entitled to premium pay even if the work is performed outside a scheduled tour of duty. This provision defines weekend premium pay and references 38 U.S.C. 7453(c).

Management contends that 38 U.S.C. 7453 limits entitlement to weekend differential pay to nurses who have a tour of duty that falls within the established weekend hours. Under the facility's Surgery Service Policy/Procedure No. 258 the PACU is only regularly staffed Monday through Friday from 7 a.m. to 6 p.m. Therefore, there is no established tour of duty on weekends. Instead, two PACU nurses are on-call after hours, weekends and holidays.

The Secretary has delegated to the Under Secretary for Health the final authority in the VA to decide whether a matter or question concerns or arises out of the establishment, determination, or adjustment of employee compensation. When labor and management disagree over such matters or questions, "The VA Partnership Council's Guide to Collective Bargaining and Joint Resolution of 38 U.S.C. 7422 Issues" provides a procedure for attempting resolution. If the parties are unable to resolve the dispute, the Under Secretary for Health is asked to render a decision.

The parties were unable to resolve their dispute at the local level. In a memorandum dated June 22, 2001, labor and management submitted a joint request to the Under Secretary for Health.

DISCUSSION

The issue in this case is, for all material purposes, identical to that in an earlier case at the VAMC Asheville decided by the Under Secretary for Health. (copy attached) The nurses in that case requested weekend differential during the hours of 6:00 p.m. and 6:00 a.m. when called in to work overtime on Saturday or Sunday. The periods of work in question were outside the nurses' regular work

schedule. The Under Secretary decided in the Asheville case that the payment of night differential and weekend premium pay to nurses for periods of overtime work concerns or arises out of a matter or question of the establishment, determination, or adjustment of employee compensation under Title 38.

ISSUE

Whether a grievance that seeks weekend differential and premium pay in addition to overtime pay, based on Article 51 of the AFGE Master Agreement, (1) concerns or arises out of the establishment, determination or adjustment of employee compensation, and (2) violates the provisions of 38 U.S.C. 7453(b) and (c).

RECOMMENDATION

Because this case is for all material purposes identical to the Asheville case (copy attached), it is recommended that the Under Secretary for Health determine, based on the discussion in the decision paper on that case, that the present grievance concerns or arises out of the establishment, determination or adjustment of employee compensation. In addition, because this issue has been raised in at least two recent collective bargaining cases, the Under Secretary should make additional findings listed below.

DECISION

The grievance described above, claiming entitlement to weekend premium pay for PACU registered nurses at VAMC Little Rock for periods of overtime work, concerns or arises out of a matter or question of the establishment, determination or adjustment of employee compensation under Title 38 U.S. Code.

To the extent that any proposal for, or provision in, a collective bargaining agreement covers, or is interpreted to cover, entitlement to basic pay, premium pay, or overtime pay for Title 38 registered nurses, such a provision or proposal "concerns the establishment, determination or adjustment of employee compensation" under Title 38 U.S. Code.

Because Chapter 74 of Title 38 U.S. Code limits weekend and evening premium pay to work performed during a "tour of duty," payment of weekend or evening premium pay in addition to overtime pay to registered nurses for work performed outside of their regularly scheduled hours of work is not authorized.

APPROVED:_____ DISAPPROVED_____

3.

Because Chapter 74 of Title 38 U.S. Code limits weekend and evening premium pay to work performed during a "tour of duty," payment of weekend or evening premium pay in addition to overtime pay to registered nurses for work performed outside of their regularly scheduled hours of work is not authorized.

APPROVED: ✓ DISAPPROVED_____

Thomas L. Garthwaite
Under Secretary for Health

11/18/01
Date