TITLE 38 NEGOTIABILITY
Decision Paper

FACTS

The Wisconsin Federation of Nurses & Health Professionals (WFNHP) is the recognized, exclusive collective bargaining agent for nurses employed at the VAMC, Milwaukee, Wisconsin. During recent contract negotiations, WFNHP submitted the following proposals:

1. A nurse who performs officially ordered or approved service in excess of forty (40) hours in an administrative work week, or in excess of eight (8) hours in a calendar day, shall receive overtime pay as computed and compensated in accordance with appropriate law and regulation.

2. Management may, at the voluntary written request of a nurse, grant compensatory time off from the employee's scheduled tour of duty in lieu of overtime pay. The amount of compensatory time off will equal the amount of time spent in overtime work. An employee's acceptance of compensatory time is voluntary.

3. Compensatory time will be taken within seven (7) pay periods following the pay period in which it is earned. If the compensatory time is not taken within the stated time period due to staffing or patient care needs, the nurse will be paid for the overtime work at the overtime rate. If the compensatory time is not taken because of personal reasons of the employee, the right to compensatory time off or overtime pay for the duty is lost.

4. Overtime must be of at least fifteen (15) minutes duration in a calendar day to be creditable for overtime pay; however overtime on a day when a nurse was not scheduled to work, or for which a nurse is required to return to such employee's place of employment, shall be deemed to be a minimum of two (2) hours in duration.

5. When a nurse is called back from an on-call duty status to perform overtime work, the above overtime provisions shall be applied upon return to duty of the nurse.

6. Employees who are placed in on-call status will be paid the usual on-call rate in accordance with applicable law and regulations for all time spent in an on-call status. On-call status will be equitably rotated among all competent and qualified employees in the Department.

7. All employees covered by this Agreement shall receive salary and benefits in accordance with appropriate law and regulations.

8. The Medical Center will make an annual survey of salaries paid to registered nurses in the community. When information gathered through the survey demonstrates that salaries of registered nurses included in the survey demonstrates that salaries of registered nurses included in this Agreement are not competitive with registered nurse salaries paid in the community, the Medical Center will recommend adjustment of salaries. Such recommendations will be made to the Chief Medical Director of the Veterans Administration in accordance with established Veterans Administration regulations.

ISSUE

Since WFNHP has filed a negotiability appeal with the Federal Labor Relations Authority it is necessary for a decision to be made by the Chief Medical Director regarding whether the proposals are negotiable.

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 U.S.C. sec. 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.

VA-employed nurses are hired pursuant to Title 38, United States Code. Each WFNHP proposal explicitly addresses the manner in which the Department will determine, adjust or establish overtime, compensatory, on-call, and other compensation for nurses. Indeed, title 38 explicitly prescribes the manner and procedures the Secretary will use to determine how such employees are compensated and how that compensation is determined. Consequently, each proposal raises "a matter or question concerning or arising out of the establishment, determination, or adjustment or employee compensation" under Title 38. Accordingly, such proposals are non-negotiable under the Act.

RECOMMENDATION

We recommend that the Chief Medical Director determine that each proposal concerns or arises out of the establishment, determination, or adjustment of employee compensation under Title 38, United States Code.

Approved/Disapproved: James W. Holsinger Jr. APR 2 4 1992

James W. Holsinger Jr., M.D. Date

Chief Medical Director