

**Title 38 Decision Paper**  
**VA Ann Arbor Healthcare System, Ann Arbor, Michigan**

**FACTS**

In January 2014, management at the VA Ann Arbor Healthcare System (Medical Center) determined that it was necessary to address registered nurse staffing imbalances in the Medical Center's Patient Care Services (PCS). (Exhibit 1). The Medical Center decided to temporarily rotate some Registered Nurses to different shifts to ensure the appropriate number of nurses were available for each shift. (*Id.*).

On January 10, 2014, the American Federation of Government Employees, Local 2092 (Union), submitted a demand to bargain to Medical Center management, concerning the decision to rotate PCS nurses between the facility's second and third shifts. (Exhibit 2). The Union requested that the Medical Center "cease and desist implementation" of the shift change "until all bargaining obligations are met." (*Id.*).

On January 17, 2014, the Medical Center's Associate Chief Nurse for Patient Care Services (Associate Chief) met with the Union to discuss its concerns. The Associate Chief agreed to outline the process for staff scheduling and to arrange a follow up meeting. (Exhibit 1).

The Associate Chief met with the Union a second time on February 14, 2014. The Associate Chief agreed to write a memo outlining consistent inpatient staff scheduling processes and share it with the Union for their agreement. Upon Union agreement, the memo would be shared with all staff. (Exhibit 3).

On May 28, 2014, the Medical Center released a memorandum (scheduling memorandum) concerning guidelines for scheduling PCS nurses. (Exhibit 1). The scheduling memorandum included provisions drawn from the parties' Master Agreement, Article 21, § 3.<sup>1</sup> Notably, it stated

that "PCS will not allow staff to self-schedule." (Exhibit 4).

On June 9, 2014, the Union submitted a demand to bargain "on the Medical Center RN schedules." (Exhibit 5). The Union contended that the Medical Center issued its scheduling memorandum prior to completing the discussions with the Union concerning the nurse schedules. (*Id.*).

The Union also filed an Unfair Labor Practice charge (ULP) with the Federal Labor Relations Authority (FLRA) on June 9, 2014 claiming that the Medical Center had agreed there would be no changes to RN schedules until the parties completed their talks. The Union further claimed that the Medical Center circulated its scheduling

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<sup>1</sup> The scheduling memorandum includes provisions that are similar or identical to Article 21, §§ 3(B), (C), (D), (E), (F), and (J). The final paragraph of the memorandum states, "The Department reserves the right to make the assignments based on other good faith considerations in assuring effective management of the work force." (Emphasis in original). (Exhibit 4).

memorandum “without informing AFGE Local 2092.”<sup>2</sup> (*Id.*). The first ULP was eventually withdrawn by the Union.

On July 8, 2014, management and the Union met to discuss the Union’s scheduling concerns. (Exhibit 1). Management explained that nurses would be entitled to submit requests for preferred days off, but that the Medical Center reserved the right to schedule RNs based on patient care needs. (*Id.*). Management also stated that schedules of Title 38 employees are excluded from collective bargaining under 38 USC §7422. The Medical Center agreed to “listen to concerns RNs had regarding their schedule,” and the parties decided to schedule a follow up meeting.<sup>3</sup> (*Id.*).

On September 2, 2014, the Union filed a second ULP, contending that the Medical Center failed to complete bargaining concerning nurse scheduling before issuing the scheduling memorandum.<sup>4</sup> (Exhibit 7). The Union explained that it first learned in January 2014 that the Medical Center intended to eliminate the “wish list” or “blanket schedule” that nurses had used for decades. (*Id.*). According to the Union, management intended to place all nurses on set schedules. (*Id.*). Although the parties met “around three times” to discuss the issue after the Union issued a demand to bargain, the Union claimed that, prior to completion of bargaining, the Medical Center “implemented a set schedule for all nursing staff and eliminated the blanket schedule or wish list.” (*Id.*).

The Medical Center responded to the second ULP on October 1, 2014. (Exhibit 8). It contended that the demand to bargain and subsequent discussions with the Union centered on PCS nurse rotations between the second and third shifts and that the wish list was never discussed. (*Id.*). The Medical Center stated that the Union reviewed the staffing guidelines prior to their release and “had played a part in the response before it was posted for employees.” (*Id.*). The Medical Center added that, “[a]t no point were the ‘wish lists’ taken away from the Nurses on the various units nor were the ‘wish lists’ the subject of the scheduling issue that [the Union] demanded to bargain over.” (*Id.*). Under the new scheduling guidelines, Registered Nurses could continue to “submit the days they prefer not to work to their Nurse Manager for consideration.” (*Id.*).

On November 18, 2014, the Medical Center submitted a statement to FLRA, explaining that the matter addressed in the Union’s September 2, 2014, ULP “impacts patient care and, therefore, is excluded from collective bargaining pursuant to 38 U.S.C. § 7422(b).” (Exhibit 9). The Medical Center requested that FLRA hold the matter in abeyance, pending a determination by the Secretary of VA. (*Id.*).

On February 11, 2015, the Office of Labor-Management Relations received the Medical Center’s request for a 38 U.S.C. §7422 determination. The Medical Center provided a copy of its request to the Union and notified the Union that it was entitled to respond with a “position statement and any supporting documentation.”. (Exhibit 10). The Union did not file a response or position statement.

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<sup>2</sup> The ULP was designated as CH-CA-14-0476. It was subsequently withdrawn by the Union. (Exhibit 1).

<sup>3</sup> The parties never scheduled a follow up meeting. (Exhibit 1).

<sup>4</sup> The second ULP was designated CH-CA-14-0617. (Exhibit 1).