

**Title 38 Decision Paper
Department of Veterans Affairs
Wilmington VA Medical Center**

FACTS

On August 7, 2014, while reviewing surgery call coverage schedules, the Chief of Staff at the Wilmington VA Medical Center (Medical Center) recognized that the Medical Center's vascular surgery program was noncompliant with the Department's requirements. (Exhibit 1). VHA Directive 2010-018 requires a hospital with intermediate level surgical complexity to provide vascular surgery coverage on a 24 hour/7 day (24/7) basis within 15 minutes by phone and 60 minutes in person.¹ The review determined that the requisite coverage was not being provided. (Exhibit 2).

After learning of the lapse in call coverage, the Medical Center's leadership temporarily reduced the facility's surgical complexity level from intermediate to standard. (Exhibit 3). Following this decision, the Chief of Staff instructed the Chief of Surgery to take several actions: (1) provide 24/7 coverage for vascular cases scheduled for August 7-8, 2014; (2) cancel, as clinically appropriate, all surgical cases of intermediate complexity scheduled for August 8, 2014, and beyond; (3) review all intermediate cases currently scheduled at the Medical Center and triage, as clinically necessary and appropriate, to other VA facilities with vascular coverage or to non-VA care; and (4) arrange for transfer, as necessary, any patients still admitted to the Medical Center who had completed intermediate complexity surgical procedures and who would not otherwise be discharged by close of business on August 8, 2014.² (Exhibit 1). These changes inevitably impacted the schedules of Medical Center employees working in the affected areas.

On September 2, 2014, AFGE Local 0342 (Union) filed an Unfair Labor Practice charge (ULP1) with the Federal Labor Relations Authority (FLRA) on the Medical Center's reduction in surgical complexity.³ (Exhibit 6). The Union claimed that the Medical Center did not provide the Union with notice of significant changes in working conditions of bargaining unit employees, bypassed the Union by meeting and speaking directly to bargaining unit employees, failed to provide the Union with notice of formal discussions, and failed to provide the Union "an opportunity to negotiate impact and appropriate arrangements for bargaining unit employees." (*Id.*).

¹ VHA Directive 2010-18 is titled, "Facility Infrastructure Requirements to Perform Standard, Intermediate, or Complex Surgical Procedures." (Exhibit 2).

² In 2012, the Medical Center established an MOU with the Jefferson Medical Center to assist in providing vascular surgery coverage. The Jefferson Medical Center later rescinded the MOU, and subsequent attempts to negotiate vascular surgery coverage with other local entities were unsuccessful. (Exhibit 3).

³ The FLRA designated the ULP as BN-CA-14-0548.

On September 19, 2014, the Union filed an information request for the "Required Business Plan Format for Proposed Restructuring of Clinical Programs or Services Requiring Under Secretary for Health Approval," including the "Stakeholder Involvement Report," and the "Interim Plan for Provision of Care." These documents are referenced in VHA Directive 2009-001 and are required when a facility plans a major restructuring of a clinical program. The Union stated its intent was "to use this information in representing the bargaining unit in negotiations with management and to provide evidence to the FLRA" for ULP1. (Exhibit 8).

On September 22, 2014, the Medical Center denied the Union's September 19, 2014 information request, based on the Medical Center's ongoing formal investigation into its surgical program. (Exhibit 10). Subsequently, the Union filed another ULP (ULP2).⁴ (Exhibit 11).

On September 22, 2014, the Union filed a Step III grievance regarding a number of the Chief of Staff's actions and the downgrade in surgical complexity, claiming that the Medical Center was "permitting the undermining of a culture of safety." (Exhibit 9). The grievance stated that the Medical Center violated the parties' Master Agreement; VA Handbook 5021; JCAHO regulations; and the Medical Staff Bylaws. (*Id.*). As remedies, the Union requested that the Medical Center follow the Medical Staff Bylaws, cease and desist coercion, intimidation, and threats, provide information to the Local regarding the strategic plan for the facility, including plans concerning staffing and resource allocation, and allow local bargaining to the fullest extent of the law. (*Id.*).

The Medical Center responded to ULP1 on September 24, 2014, noting that it had kept the Union informed of all developments relating to its reduction in surgical complexity and subsequent restructuring via briefings and meetings with the Director and Chief of Staff. (Exhibit 12).

The Medical Center responded to ULP2 on October 3, 2014. (Exhibit 13). The Medical Center reiterated that it was involved in both an OIG investigation and a formal Administrative Investigation Board at the facility related to its decision to "stand down intermediate complexity surgeries." (*Id.*). The Medical Center explained that the requested information was part of the ongoing investigations, and once the investigations were complete, it would work with the Union to provide all allowable information. (*Id.*).

On November 3, 2014, the parties met to discuss the Union's September 22, 2014, Step III grievance. (Exhibit 14). On November 4, 2014, the Medical Center issued its grievance response, denying the grievance "because the Union failed to provide an oral

⁴ The FLRA designated the ULP as BN-CA-14-0574.