



DEPARTMENT OF VETERANS AFFAIRS  
UNDER SECRETARY FOR HEALTH  
WASHINGTON DC 20420

OCT 02 2007

Maxcine Sterling  
Director, Worklife and Benefits Service  
Department of Veterans Affairs  
810 Vermont Avenue NW  
Washington, DC 20420

Jane M. Nygaard  
National Vice President  
AFGE – 8<sup>th</sup> District  
2950 Metro Drive, Suite 315  
Minneapolis, MN 55425

Dear Ms. Sterling and Ms. Nygaard:

I am responding to the issues raised in your memoranda of July 26, 2007, and August 13, 2007, concerning two provisions in AFGE's proposed Memorandum of Understanding on VA Handbook 5011/9, "Hours of Duty and Leave".

Pursuant to delegated authority, I have decided on the basis of the enclosed decision paper that the issues presented are matters concerning or arising out of professional conduct or competence and thus exempted from collective bargaining by 38 U.S.C. § 7422(b).

Sincerely yours,

A handwritten signature in cursive script that reads "Michael J. Kussman".

Michael J. Kussman, MD, MS, MACP  
Under Secretary for Health

Enclosure

**Title 38 Decision Paper  
VA Handbook 5011/9,  
Alternative Work Schedules for Nurses**

FACTS

1. On June 15, 2006, the Department of Veterans Affairs (Department) implemented changes to VA Handbook 5011/9, "Hours of Duty and Leave." (Attachment A.) These changes were made by the Worklife and Benefits Service of the Office of Human Resources Management, which is responsible for the Handbook. The Handbook contains mandatory hours of duty and leave procedures for nurses on alternative work schedules (AWS).
2. On August 15, 2006, the American Federation of Government Employees (AFGE or union) submitted a demand to bargain on "VHA Alternative Work Schedules for Registered Nurses," as established in the Handbook. (Attachment B.) Subsequent to that demand, management officials from the Worklife and Benefits Service and from the Office of Labor-Management Relations engaged in a number of telephonic bargaining sessions relating to the changes to the Handbook.
3. On or about January 4, 2007, the union presented the management bargaining team with a proposed Memorandum of Understanding (MOU). (Attachment C.) The management team agreed to most of the proposed provisions in the MOU but believed that two provisions – Part B, paragraph 2 and Part B, paragraph 6 - were contrary to 38 U.S.C. § 7422(b), which excludes from collective bargaining and from the negotiated grievance procedure any issue concerning or arising out of professional conduct or competence, meaning direct patient care or clinical competence. In a memorandum to the Under Secretary for Health (USH) dated July 23, 2007, Maxcine Sterling, Director of the Worklife and Benefits Service, requested that the USH determine whether these two provisions are excluded from collective bargaining and from the negotiated grievance procedure pursuant to 38 U.S.C. § 7422(b). (Attachment D.)<sup>1</sup> The union submitted its response to management's request in a memorandum to the USH, dated August 13, 2007. (Attachment F)

THE SUBJECT PROPOSALS

1. The first AFGE proposal, set forth in Part B, Paragraph 2 of the MOU, relates to language in VA Handbook 5011/9, Part II, Chapter 3, paragraph

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<sup>1</sup> On July 23, 2007, Ms. Sterling provided the union with a copy of management's submission and reminded the union of its right to submit its input on the issues raised to the USH within 10 days. Attachment E.