



DEPARTMENT OF VETERANS AFFAIRS  
UNDER SECRETARY FOR HEALTH  
WASHINGTON DC 20420

MAY 19 2008

Cathy Spivey-Paul, FACHE  
Director (00)  
VA Northern Indiana Health Care System  
2121 Lake Avenue  
Fort Wayne, Indiana 46805

Gwen Adams,  
Vice President, AFGE Local 1384  
2121 Lake Avenue  
Fort Wayne, Indiana 46805

Dear Ms. Spivey-Paul and Ms. Adams:

I am responding to your memoranda of October 3, 2007, and October 11, 2007, respectively, concerning the enclosed grievance filed by American Federation of Government Employees Local 1384.

Pursuant to delegated authority, I have determined on the basis of the enclosed decision paper that the issue presented by this grievance is not a matter or question concerning or arising out of professional conduct or competence and does not raise issues concerning or arising out of peer review within the meaning of 38 U.S.C. § 7422(b); however, the Union's requested remedies are non-grievable and non-negotiable because they concern or arise out of professional conduct or competence and peer review within the meaning of 38 U.S.C. § 7422(b).

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

Sincerely yours,

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

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

Enclosure

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**Title 38 Decision Paper –Northern Indiana Health Care System  
VA -08 -**

FACTS:

This matter arises out of a grievance filed by the American Federation of Government Employees (AFGE) Local 1384 (Union) alleging that P and S improperly met with employee to communicate her year-end proficiency rating at the Northern Indiana Healthcare System (VAMC). (Attachment 1) Ms. P supervised Ms. from December 25, 2005, to October 28, 2006. (Attachment 2) However, Ms. S began supervising Ms. on October 29, 2006. (Attachment 2) On December 22, 2006, Ms. S and Ms. P met with Ms. to provide her with a joint proficiency rating. (Attachment 2) Ms. S is listed on the report as the individual with whom the joint review was conducted and Ms. P is listed as the Rating Official. Both Ms. S and Ms. P signed the report.

On or about January 18, 2007, AFGE Local 1384 filed a grievance on Ms. 's behalf, alleging that Ms. P and Ms. S improperly met with Ms. to discuss her proficiency rating. (Attachment 1) The Union asserted that Ms. S should have been excluded from Ms. 's proficiency rating process because she had not supervised her for more than 90 days as required by VAMC policy. (Attachment 1; Attachment 10) The Union alleged that Management violated Article 54, Section E, and that Ms. 's proficiency rating was in conflict with "the policy for Northern Indiana Health Care System," which was not specifically referenced. As a remedy, the Union requested that Ms. be given a fair and accurate proficiency rating.

On January 30, 2007, Ms. S sent an email to her staff that stated: "In order to evaluate you, I had to be in my position for 90 days. If your evaluation is past due, that is the reason why. Please submit any information you would like me to take into consideration by COB 2/2/07. My plan in to completed (sic) evaluations by 2/9/07." (Attachment 3)

On January 30, 2007, Management met with the Union in an effort to resolve the grievance (Attachment 4). On February 1, 2007, Ms. P responded to the Union's grievance. (Attachment 4) Ms. P noted that although proficiencies cannot be appealed, she had met with the Union to discuss the concerns raised in the grievance and made several suggestions concerning possible action by the Union and/or Ms. (Attachment 4).

Thereafter, AFGE filed a second step grievance with Associate Director for Patient Care Services, which raised the same concerns that were raised at step one. (Attachment 6) As a remedy, the Union requested that Ms. be given a fair and accurate proficiency rating.