



DEPARTMENT OF VETERANS AFFAIRS
UNDER SECRETARY FOR HEALTH
WASHINGTON DC 20420

SEP 30 2008

Michael Lawson
Medical Center Director
Office of the Director (00)
VA Boston Healthcare System
1400 VFW Parkway
Boston, MA 02130

Ellen M. Pitts, RN
President
NAGE Local R1-187
940 Belmont Street
Brockton, MA 02301

Bethany McIvor
President
AFGE Local 221
VA Boston Healthcare System
150 S. Huntington Ave.
Boston, MA 02130

Dear Mr. Lawson, Ms. Pitts and Ms. McIvor:

I am responding to the issues raised in your memoranda of April 17, 2008, April 22, 2008, and April 25, 2008, respectively, concerning the negotiability appeals filed by NAGE Local R1-187 and AFGE Local 221 regarding the VA Boston Healthcare System policy on mandatory tuberculosis testing for all employees.

Pursuant to delegated authority, I have decided on the basis of the enclosed decision paper that the negotiability appeals involve matters concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422 and are therefore outside the scope of collective bargaining.

Sincerely yours,

A handwritten signature in cursive script that reads "Michael J. Kussman M.D." is positioned above the typed name.

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

Enclosure

**Title 38 Decision Paper
Boston Healthcare System, Massachusetts
VA 08-0**

FACTS

In 2005, the VA Boston Healthcare System (VA BHS) had a tuberculosis (TB) policy, Medical Center Memorandum (MCM) No. 00-036-LMS, "Occupational Health Services," that gave employees the opportunity to report annually to the Occupational Health Office to be tested for exposure to TB. The testing was voluntary.

In May 2005, the VA BHS became aware that a health care worker with active TB had been working at two different VA BHS facilities. As a result of this incident, approximately 730 patients and 1200 employees were screened for exposure to TB. Subsequently, the VA BHS initiated a series of bi-weekly meetings to discuss the development of a new TB policy. In December 2005, the VA BHS developed a new policy titled Patient Care Memorandum No. 11-039-LM, "Identification and Control of Tuberculosis." (Attachment A) The new policy mandated annual TB testing for all employees, contractors, and volunteers.

In January 2006, the National Association of Government Employees (NAGE), Local R1-187, submitted bargaining proposals to VA BHS management by manually deleting some of the provisions of the draft TB policy. (Attachment B)

On April 5, 2006, the American Federation of Government Employees (AFGE) Local 221 submitted proposals on the policy. (Attachment C)

On December 21, 2006, Rhonda DeChambeau, Chief of Employee and Labor Relations at the VA BHS, submitted a memorandum to NAGE stating that the decision to make TB testing mandatory to all employees was non-negotiable. (Attachment D) Ms. DeChambeau explained that the mandatory TB testing policy was needed to ensure the health and safety of employees and patients in the VA BHS. *Id.* ¶ 2. Ms. DeChambeau provided the following detailed explanation for the need to establish the mandatory policy:

Although the prevalence of TB in Boston is low, a single exposure to tuberculosis at one facility last year resulted in the infection of multiple patients and employees.¹ A more recent exposure this past summer also

¹ AFGE challenged management's assertion that VA patients and/or employees have been *infected* with TB through exposure to untested staff members. Attachment M. Although management did not initially address this issue in its 38 U.S.C. § 7422 decision request, it clarified that TB infection occurs when the TB organism is introduced into an individual. In most cases, the TB organism remains dormant and does not cause active disease unless the infected