



DEPARTMENT OF VETERANS AFFAIRS  
UNDER SECRETARY FOR HEALTH  
WASHINGTON DC 20420

NOV 19 2008

Michael D. Adelman, M.D.  
VA Medical Center Erie PA  
Director (00)  
135 East 38<sup>th</sup> Street  
Erie, PA 16504

Joel Crandall  
Chairperson, SEIU, Local 200 United (RNU)  
135 East 38<sup>th</sup> Street  
Erie, PA 16504

Dear Mr. Adelman and Mr. Crandall:

I am responding to your correspondence of June 18, 2008, concerning a grievance filed by SEIU Local 200 United over the non-selection of a registered nurse for a position on Unit 6 at the VA Medical Center in Erie, PA.

Pursuant to delegated authority, I have determined on the basis of the enclosed decision paper that the union's grievance concerning the non-selection of Mr. Monte Hoover is excluded from collective bargaining as a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. 7422.

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, M.D., MS, MACP,  
Under Secretary for Health

Enclosures

Title 38 Decision Paper – VA Medical Center Erie PA

**FACTS:**

On December 21, 2007, the nurse executive at the VA Medical Center in Erie, PA, posted a vacancy announcement for a registered nurse position on Unit 6. The position advertised was for a full time registered nurse on a day tour with support to evenings. The announcement stated that the selected RN would provide direct patient care as well as managing the nursing care provided by the non-professional staff, and that the successful applicant would have basic arrhythmia and Advanced Cardiac Life Support (ACLS) training. (Attachment A)

Four registered nurses applied for the vacant position. Of the four applicants, three were currently assigned to evening tours on Unit 6 and the fourth was assigned to Surgical Care. The three RNs who were assigned to Unit 6 were considered to be equally competent and qualified. All three had attended an annual competency renewal which included Glucometer Annual Competency Operator Re-Certification, Restraints Competency, Pain Competency, Basic Arrhythmia and Telemetry, Safe Patient Handling and Movement Policy, and Patient Controlled Analgesia. All three were also current in ACLS training. In addition, the three RNs possessed recent critical care experience as a result of working on the unit where the vacancy existed. The fourth applicant, Monte Hoover, RN, had been assigned to the Surgical Care program for approximately eleven years and did not attend the annual competency renewal, nor was he current in ACLS.

Once management determined that three candidates from within Unit 6 were equally competent, proper consideration was given to the seniority date of these individuals. The most senior of these three RNs, Patricia Page, was selected. On January 16, 2008, the acting nurse executive forwarded a memorandum to Human Resources indicating that Ms. Page had been selected. (Attachment B) On January 16, 2008, the acting nurse executive provided Ms. Page and the other applicants written notice regarding the selection for the position. (Attachment B)

On February 19, 2008, the Service Employees International Union, Local 200United (SEIU or Union) filed a written grievance challenging Mr. Hoover's non-selection (Attachment C). The nature of the grievance was identified as: "A more senior, more competent and qualified in-house RN was passed over for an in-house Staff RN job posting so that management could give a RN from the affected unit the posted position." The remedy requested in the grievance was that management "[c]ease and desist from this practice and abide by the RN Contract giving all bargaining unit RNs fair and equitable consideration for all applicable job postings based on seniority, competence, and qualifications."

On February 22, 2008, Ms. Cynthia Russell, Supervisor of Unit 6, provided a written response to the grievance at the first step of the grievance process. In her response, Ms.