



DEPARTMENT OF VETERANS AFFAIRS  
UNDER SECRETARY FOR HEALTH  
WASHINGTON DC 20420

SEP 02 2008

Wanda Mims, MBA  
Director  
100 Emancipation Drive  
Hampton, VA 23667

Neil C. Booney  
Booney & Allenberg, P.C.  
HayGood Office Building  
4652-A Haygood Road  
Virginia Beach, VA 23455

Dear Ms. Mims and Mr. Booney:

I am responding to the issues raised in your memoranda of March 12 and 13, 2008, respectively, concerning the union's grievance relating to the creation of separate pay scales for Nurse Practitioners and Clinical Nurse Specialists based upon salary survey data, and retroactive pay for Nurse Practitioners and Clinical Nurse Specialists once the separate pay scale is established.

Pursuant to delegated authority, I have decided on the basis of the enclosed paper that the union's grievance concerning the HVAMC's alleged failure to follow VA policy when establishing pay scales for Nurse Practitioners and Clinical Nurse Specialists is not a matter concerning or arising out of the establishment, determination or adjustment of employee compensation under Title 38; and, that the issue of whether the HVAMC's failure to establish separate specialty schedules for Nurse Practitioners and Clinical Nurse Specialists constituted an administrative error is not covered by 38 U.S.C. 7422(b) exclusions.

Sincerely yours,

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

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

Enclosure

cc: Ms. Debra Corbin

Title 38 Decision Paper  
VA Medical Center, Hampton, VA

VA-08-0

FACTS:

On July 12, 2007, AFGE Local 2328 (union) filed a Step III grievance alleging violations to Article 51 of the VA/AFGE Master Agreement, 38 U.S.C. § 7451, and VA Regulations. (Attachment A) The union further alleged that the Advanced Practice Nurse Locality Pay Schedule used at the Hampton VAMC (HVAMC) violates the Nurse Locality Pay Regulations since Nurse Practitioners (NP) and Clinical Nurse Specialists (CNS) perform different duties and should not be on the same schedule. (Attachment A, ¶ 2) The union requested the following remedies:

- AFGE request (sic) formation of separate Pay Scales for NP & CNS based upon salary survey data;
- AFGE request (sic) that when data for local labor market [LLM] is not available, that the LLM be expanded to allow for capture of data in accordance with VA LPS [locality pay survey] regulations; and
- AFGE request (sic) attorney fees and any remedy available under the law.

Attachment A, ¶ 4

On July 27, 2007, management at the HVAMC responded to the grievance by stating that it is the HVAMC's decision to establish a separate specialty schedule for CNS and Advanced Practice Nurses (APN) (Attachment B) In addition, management informed the union that if data for the local labor market (LLM) is not available, the LLM will be expanded to allow for the entire capture of data.

On August 3, 2007, the union submitted a grievance memorandum asking for clarification of management's decision to establish a separate specialty schedule for CNS and APN, and a timeline for completion of the nurse locality pay process. (Attachment C)

On August 28, 2007, management submitted its response to the union and clarified that it would have two different specialty schedules, one for CNS and another for NP. (Attachment D) Management stated that the surveys would be completed by September 28, 2007, contingent upon the necessary information being available.

On September 28, 2007, the union submitted a memorandum invoking arbitration. (Attachment E)