



DEPARTMENT OF VETERANS AFFAIRS
UNDER SECRETARY FOR HEALTH
WASHINGTON DC 20420

MAY 19 2008

Wayne Pfeffer, MHSA, FACHE
Director
Louisville VAMC
800 Zorn Avenue
Louisville, KY 40206

Mark Roth
General Counsel
American Federation of Government Employees
80 F Street, NW
Washington, DC 20001

Dear Mr. Pfeffer and Mr. Roth:

I am responding to the issues raised in your memoranda of February 29, 2008, and March 31, 2008, respectively, concerning a grievance filed by the American Federation of Government Employees (AFGE) Local 1133 regarding overtime compensation for nurses in the Geriatric Extended Care (GEC) facility at the Louisville VAMC. Although the union also filed an Unfair Labor Practice Charge, the union has since withdrawn the charge, so it will not be addressed in this decision.

Pursuant to delegated authority, I have decided on the basis of the enclosed decision paper that the issue presented by the grievance is a matter concerning or arising out of the establishment, determination or adjustment of Title 38 employee compensation or professional conduct or competence (i.e. direct patient care and clinical competence) and is therefore excluded from collective bargaining and from the negotiated grievance procedure.

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 Medical Center- Louisville, KY
VA 08-XX**

FACTS:

On February 23, 2007, the American Federation of Government Employees (AFGE), Local 1133, Louisville, KY filed a grievance alleging that employees assigned to the Geriatric Extended Care Facility (GEC) service worked "countless hours past their normal tour of duty" without compensation since 2006. The grievance alleged that GEC nurses routinely stayed after their tours to avoid adverse patient care outcomes and/or detriment to the nurses' licensure, and that management's failure to pay overtime for such service violated Article 16 of the VA-AFGE master agreement and "is also a violation of the 'suffer and permit' rule." The requested remedy was "Overtime or Comp Time if GEC Nurses stay past their normal tour of Duty." Exhibit 1.¹

On March 20, 2008, Chief of Staff Marylee Rothschild, MD denied the grievance. Exhibit 3. Dr. Rothschild advised AFGE that there would not be a blanket approval for overtime and the need for overtime would continue to be evaluated on a case by case basis. On March 23, 2007, AFGE invoked arbitration. Exhibit 4.

On February 25, 2008, Dr. Lisa Vuocolo, Associate Chief of Staff, GEC, provided an affidavit stating that she has never ordered any RN in GEC to stay beyond his or her tour of duty without compensation. Exhibit 5. Furthermore, Dr. Vuocolo stated that whenever she observed someone staying past their normal tour of duty, she instructed them to go home. Dr. Vuocolo also stated that in an effort to assist RNs who have trouble completing their work during their normal tour of duty, she has streamlined some of the GEC processes to decrease time per consult, and has assigned the responsibility of scheduling physical therapy to other employees. Douglas B. Sloan, Administrative Assistant for GEC, also provided an affidavit in which he stated that he has never ordered any GEC RN to stay past his or her tour of duty, and has reminded the RNs on numerous occasions to not stay past their tour of duty. Exhibit 6. Both Mr. Sloan and Dr. Vuocolo also declared that they have told the GEC RNs that they must request overtime in advance, and that all of the overtime that had been authorized in advance had been paid.

On February 5, 2008, the union filed an Unfair Labor Practice (ULP) claiming that management treated the GEC employees differently after the grievance was filed. Exhibit 7. The union withdrew the ULP on March 31, 2008. Exhibit 8.

On February 8, 2008, management informed the union that it had requested a decision from the Under Secretary for Health (USH) on whether the issue raised in

¹ A study of overtime in the GEC for fiscal years 2006 and 2007 showed that some GEC nurses received overtime pay during those years, while other GEC nurses did not. Exhibit 2.