



DEPARTMENT OF VETERANS AFFAIRS  
UNDER SECRETARY FOR HEALTH  
WASHINGTON DC 20420

MAY 19 2008

Dennis H. Smith  
VA Maryland Health Care System  
Director (00)  
Director's Office (BT/00)  
10 North Greene Street  
Baltimore, MD 21201

James J. Dever  
Assistant Regional Counsel  
NAGE/SEIU  
159 Burgin Parkway  
Quincy, MA 02169-4213

Dear Mr. Smith and Mr. Dever:

I am responding to your correspondence of August 24, 2007 and September 21, 2007, concerning a grievance filed by NAGE Local R3-19 over the non-selection of a registered nurse for the position of External Peer Review Program Coordinator.

Pursuant to delegated authority, I have determined on the basis of the enclosed decision paper that the union's local grievance concerning the non-selection of Ms. [redacted] is not excluded from collective bargaining as a matter or question concerning or arising out of professional competence or conduct; however, the union's requested remedies are non-grievable and non-negotiable because they concern or arise out of the determination or adjustment of compensation and involve the hiring, interview, and selection process of title 38 nurses based on their professional conduct or competence within the meaning of under 38 U.S.C. § 7422.

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

Sincerely yours,

Michael J. Kussman, M.D., MS, MACP  
Under Secretary for Health

Enclosure

## FACTS

On August 4, 2006, the nurse recruiter at the VA Maryland Health Care System (MHCS) posted a vacancy announcement for an External Peer Review Program Coordinator (EPRPC). (Attachment A) The announcement stated that the incumbent would report to the Director, Performance Improvement and Accreditation and that the vacancy would remain open until August 25, 2006, or until filled. On August 28, 2006, the nurse recruiter forwarded to the Director, Performance Improvement and Accreditation a list of qualified candidates for the EPRPC position. (Attachment B)

After the August 4 announcement closed, the nurse recruiter learned that the position would be aligned under the Office of Coordinator, Performance Center. On September 20, 2006, the nurse recruiter rescinded the August 4 vacancy announcement and posted a new one with corrected information about the reporting relationship and a new closing date of October 11, 2006, or until filled. (Attachment C) On October 11, 2006, the nurse recruiter sent a list of qualified candidates to Alice Krupski, Acting Director, Performance Measures, who was the selecting official. (Attachment D) This list was different from the list of qualified candidates referred to the Director, Performance Improvement and Accreditation, after the earlier announcement closed.

Ms. Krupski reviewed the documents in the candidates' application packages and made a selection without interviews. \_\_\_\_\_, an internal applicant who was referred to the selecting officials on both lists, was selected for the position. Ms. \_\_\_\_\_ was notified of her selection on December 4, 2006. (Attachment E) Ms. Krupski articulated the following reasons for her selection:

- Applicant is a team player; enhancing group dynamics but remains an individual
- Relates extremely well with all levels of staff
- Has effective communication (written and verbal) skills
- Is a self starter; works independently
- Takes constructive criticism well

(Attachment F) In addition, Ms. Krupski stated that "...the reason I selected \_\_\_\_\_ was the pure fact she had great customer service (excellent communicator) and worked extremely well as a team player. There are no [p]atient [c]are [f]unctions with this position except for knowledge of [c]linical [c]onditions and[h]ealth [c]are [s]trategies." (Attachment G)

On February 2, 2007, the National Association of Government Employees, Local R3-19 (NAGE or union), filed a Step 1 grievance on behalf of \_\_\_\_\_, who had applied for EPRPC position when it was announced the second time but not when it was announced the first time. (Attachment H) Although Ms. \_\_\_\_\_ was determined to be qualified for the position and was referred to Ms. Krupski for consideration, she was not selected. (Attachment I) In the grievance, NAGE asserted that management purposefully delayed the selection process to allow a less qualified candidate to obtain the qualification requirements for the position. Additionally, NAGE complained that interviews were not conducted despite the fact that an interview panel was appointed