

Title 38 Decision Paper
Department of Veterans Affairs
Huntington VA Medical Center

I. FACTS

The Huntington VA Medical Center (Medical Center) conducts multidisciplinary team rounds (or integrated rounds) on a daily basis with groups of health care providers. (Exhibit 1). The teams encompass multiple health care disciplines, including physicians, registered nurses, social workers, physical therapists, respiratory therapists, chaplains, pharmacists, and nutritionists. The teams meet as a group with patients to assess their comprehensive care needs. (*Id.*). Ultimately, the teams collaborate to formulate short and long term health care plans specific to each patient.

One of the responsibilities of Intensive Care Unit (ICU) registered nurses participating on the multidisciplinary teams was to input initial and follow-up notes into the Computerized Patient Records System (CPRS), the electronic patient file. (*Id.*). Following an investigation of the note-inputting process, the Medical Center learned that ICU registered nurses were not following the expected protocol. (*Id.*). As a result, the Medical Center reassigned the responsibility for inputting ICU notes into CPRS to the social worker care managers on the multidisciplinary teams. Although registered nurses were relieved of the responsibility for inputting the notes, they continued to participate in multidisciplinary team rounds. (*Id.*).

On June 27, 2012, the American Federation of Government Employees (AFGE or Union) submitted a Demand to Bargain to Medical Center management stating that the Medical Center "failed to notify the Union of changes in conditions of employment, when the change in integrated rounds was implemented without our knowledge." (Exhibit 2). The ICU RNs informed management that "the core issue related to the Demand to Bargain was not related to participating in the rounds, but specifically the process where the RNs would input a note into the CPRS." (Exhibit 1). On October 3, 2012, AFGE filed a separate Demand to Bargain in which it stated that "we are filing a Demand to Bargain on appropriate assignments for ICU nurses when being pulled to the floors." (Exhibit 3). The Demand also stated that registered nurses in the ICU were not accustomed or competent to carry an entire team when assigned to a nursing floor other than the ICU. (*Id.*).

On October 11, 2012, Medical Center management met with the Union to discuss the issues raised in the October 3, 2012 Demand to Bargain. (Exhibit 1). The Medical Center agreed to solicit information from the ICU registered nurses concerning the duties that the registered nurses felt comfortable and competent performing when assigned to a different nursing floor. (*Id.*). On November 30, 2012, the parties participated in a follow-up meeting during which the Medical Center provided the Union with the responses it received from ICU registered nurses. (*Id.*, Exhibit 12).

On January 16, 2013, the Union filed an Unfair Labor Practice (ULP) charge with the Federal Labor Relations Authority (FLRA). (Exhibit 4). The ULP claimed the Medical

Center failed to bargain in good faith and that it violated the Master Agreement. The ULP was based on an alleged change in conditions of employment when the Nursing Office "changed the way the nursing staff was doing integrated rounds in the ICU without notifying the Union." The ULP also asserted that the Medical Center violated the Master Agreement by refusing to sufficiently bargain over its practice of assigning ICU nurses to team lead inpatient areas. (*Id.*).

On February 6, 2013, the Medical Center Director notified the Union that the matters addressed in its ULP were non-negotiable because they were covered by the professional conduct or competence exclusion in 38 United States Code (U.S.C.) § 7422. (Exhibit 5). The Director stated his willingness to discuss the ULP issues with the Union in an effort to reach an agreement. (*Id.*). On February 14, 2013, Regional Counsel submitted the Medical Center's written position on the ULP charge and requested that FLRA stay any further proceedings on the matter until such time as the Secretary reaches a decision on the potential exclusion of the matter from bargaining under 38 U.S.C. § 7422. (Exhibit 6).

On March 4, 2013, Medical Center management and AFGE met to discuss the allegations in the ULP. The Medical Center explained the specific duties it expected ICU registered nurses to perform when assigned to other nursing floors. (Exhibit 1, Exhibit 7). On March 11, 2013, the Union submitted a response to management's March 4, 2013, explanation of expected duties. (Exhibit 8). The Union provided specific proposals that set out detailed parameters for nursing duties and responsibilities when ICU registered nurses were assigned to other nursing floors at the hospital. (*Id.*).

On March 19, 2013, FLRA contacted Regional Counsel to determine if management had filed a formal 38 U.S.C. § 7422 request for determination. Regional Counsel informed FLRA that the issue was still in the informal resolution stage of the 38 U.S.C. § 7422 process. (Exhibit 9).

On August 26, 2013, the Medical Center Interim Director submitted a formal request for a 38 U.S.C. § 7422 determination concerning the two issues raised in the Union's ULP charge. (Exhibit 1). AFGE did not file a response or rebuttal to the Medical Center's request for a 38 U.S.C. § 7422 determination. (Exhibit 10).

II. AUTHORITY

The Secretary has the final authority to determine whether a matter or question concerns or arises out of professional conduct or competence (i.e., direct patient care or clinical competence), peer review, or employee compensation within the meaning of 38 U.S.C. § 7422(b).

III. ISSUES

- A. Whether the Unfair Labor Practice charge claiming that the Huntington VA Medical Center refused to bargain over changes in the manner in which registered nurses in ICU were conducting integrated rounds involves a matter or

question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422.

- B. Whether the Unfair Labor Practice charge claiming that the Huntington VA Medical Center refused to bargain over the duties and responsibilities expected of ICU registered nurses when those nurses are assigned to other nursing floors involves a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422.

IV. DISCUSSION

The Department of Veterans Affairs Labor Relations Improvement Act of 1991, 38 U.S.C. § 7422, granted collective bargaining rights to title 38 employees, but specifically excluded from the collective bargaining process matters or questions concerning or arising out of professional conduct or competence (direct patient care or clinical competence), peer review, or employee compensation, as determined by the Secretary.

A. Integrated Rounds Issue

Participation by registered nurses in the daily integrated rounds conducted at the Medical Center is the essence of direct patient care at the facility. A group of health care professionals meet with patients initially and throughout the course of their treatment to establish and monitor a personalized comprehensive treatment plan. After discussion among the multidisciplinary team members, the plan is set out in the patient's electronic file (known as the CPRS).¹ (Exhibit 11). Completing the initial notes in CPRS and updating those notes as the patient progresses through treatment is unquestionably an important component of the patient's care. Determinations by the Medical Center as to how much involvement ICU registered nurses will have in creating or updating the patient's electronic treatment file is a matter concerning direct patient care and is excluded from bargaining by application of 38 U.S.C. § 7422.

B. ICU Registered Nurse Duties when Assigned to Other Floors

The Medical Center assigns ICU registered nurses to assist in other areas of the hospital when the ICU patient census allows. (Exhibit 1). Some of the ICU nurses were uncomfortable acting as Team Leads when assigned to other floors and lobbied for limited duties and responsibilities when performing nursing services outside of the ICU. (Exhibit 12). Following the filing of the Union's ULP charge, on February 6, 2013, management informed the Union that the duties and responsibilities of the ICU nurses when assigned to assist in other areas related to direct patient care and therefore were excluded from collective bargaining under 38 U.S.C. § 7422.

¹ The CPRS includes, among other items, sections concerning the patient's past medical history, priorities of care, medical issues, nursing issues, and the patient's discharge plan. (Exhibit 11).

In a line of past 38 U.S.C. § 7422 decisions, the Under Secretary for Health² broadly concluded that registered nurse hospital assignments are matters concerning direct patient care. In *VAMC White River Junction* (July 7, 1994), the Under Secretary stated that, "Staffing and assignments of registered nurses based on clinical needs directly impact on the quality of patient care." (Exhibit 13). Another decision, *VAMC Poplar Buff* (February 12, 2003), considered whether Union proposals related to a management decision to reassign one registered nurse from each of two teams in the facility's Primary Care Clinic to other areas of the medical center were outside management's duty to bargain under 38 U.S.C. § 7422. The Under Secretary concluded that the medical center made the change in the registered nurse staffing mix to "provide for better patient care and more efficient administration." (Exhibit 14). As a result, the reassignment was a matter that concerned professional conduct or competence and the medical center was under no obligation to bargain over the Union's proposals. (*Id.*).

While it is clear that management decisions concerning nursing assignments and reassignments related to patient care are excluded from bargaining under 38 U.S.C. § 7422, the more narrow question here is to what extent management must negotiate with the Union regarding the duties and responsibilities that ICU registered nurses may be assigned when working in other units or areas of the hospital. All of the Union's proposals indisputably relate to direct care of patients, including the total number of patients cared for and specific duties such as administering medications, and assessing, monitoring, and discharging patients. (Exhibit 8). As each of the Union's proposals concern the direct care of patients by registered nurses, consistent with the professional conduct or competence exclusion in 38 U.S.C. § 7422, the Medical Center is under no obligation to negotiate the proposals with the Union.

In the *Joint 38 U.S.C. § 7422 Workgroup Recommendations As Revised and Approved by the Secretary of the Department of Veterans Affairs* (Secretary's Decision Document), the Secretary directed facilities to notify the Union and enter a "good faith dialogue" when changing local conditions of employment, without regard to whether the anticipated change implicates 38 U.S.C. § 7422. (Exhibit 15). In this instance, the Medical Center, after soliciting input from its ICU registered nurses, discussed with AFGE limitations on nursing duties when ICU registered nurses were assigned to other floors in the hospital. (Exhibit 1, Exhibit 7, Exhibit 12). Although the Union proposed other restrictions, the Medical Center complied with its obligation to enter a good faith dialogue. It was not required to bargain with the Union over its additional proposals.³

² Until recently, the Secretary delegated responsibility for making 38 U.S.C. § 7422 determinations to the Under Secretary for Health.

³ The Union's proposals go to the substance of ICU registered nurse duties and responsibilities. (Exhibit 8). As such, the proposals also interfere with management's right to assign work and are non-negotiable under 5 U.S.C. 7106 (a)(2)(A). Alternatively, it may be argued that the proposals are impact and implementation proposals, designed to ameliorate the impact of management's assignments of ICU registered nurses to other nursing floors. If characterized in this manner, the Secretary's Decision Document unequivocally addresses the matter in the Document's Preamble: "Nothing in this [document] means 7422 is being expanded to appropriate arrangements and procedures (impact and implementation)." (Exhibit 15).

RECOMMENDED DECISIONS

A. The ULP charge claiming that the Huntington VA Medical Center changed conditions of employment by altering the manner in which ICU registered nurses were conducting integrated rounds involves a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422.

APPROVED 

DISAPPROVED _____

B. The ULP charge claiming that the Huntington VA Medical Center failed to bargain in good faith over the duties and responsibilities expected of ICU registered nurses when those nurses are assigned to other nursing floors involves a matter or question concerning or arising out of professional conduct or competence within the meaning of 38 U.S.C. § 7422.

APPROVED 

DISAPPROVED _____


Eric K. Shinseki
Secretary of Veterans Affairs

1/29/2014
Date