



Department of
Veterans Affairs

In Reply Refer to:

. JUL 24 1992

Mr. Allan S. Goss
Director (00)
VA Medical Center
100 Emancipation Road
Hampton, VA 23667

Dear Mr. Goss:

I am responding to the issues raised concerning the enclosed twelve (12) grievances filed by the American Federation of Government Employees (AFGE) pertaining to weekends off for night nurses.

Under 38 USC Section 7422, any matter affecting health care personnel in positions described in 38 USC 7421(b) and concerning or arising out of professional conduct or competence, including direct patient care and clinical competence, is nonnegotiable. The law authorizes the Secretary, or delegatee, to determine the grievability of any matter arising under its provisions. The Secretary has delegated to my office the authority to make any such determinations, which are not subject to administrative review under the law.

Acting pursuant to this authority, I have determined that the scheduling of tours of duty and assignments of health care personnel described in 38 USC 7421(b) are fundamental to establishing the level and quality of patient care to be provided by the Department of Veterans Affairs. The need to stabilize staffing patterns and to determine staffing requirements and assignments concerns the overall competency of the staff at each facility and their ability to perform without compromising patient care, given the staff available. Consequently, I believe any matter relating to tours of duty and assignments of nurses at any VA facility is related to the professional competence or conduct of these employees. Accordingly, the grievances concerning hours of duty and assignments are not grievable.

Sincerely yours,

A handwritten signature in cursive script that reads "James W. Holsinger Jr.".

James W. Holsinger Jr., M.D.
Chief Medical Director

Enclosures

Title 38 Grievability
Decision Paper

Facts:

A 1977 negotiated agreement between the VAMC, Hampton and the American Federation of Government Employees (AFGE) covering nurses provides that "a weekend for a night nurse shall include Sunday and Monday."

1. Due to numerous requests from night nurses (going back several years) to change their nonduty days from Sunday and Monday to Saturday and Sunday, changes were made. Changes were also made to accomodate employees so that they could take advantage of educational opportunities which were judged to be of career value.

2. On October 31, 1991, the union filed twelve (12) grievances over the change. Each grievance, representing a different ward, contained the same language and allegations.

3. The union has requested arbitration over the alleged breaches of the negotiated agreement.

4. AFGE has requested the following remedies:

- (A) Retroactive Saturday premium pay, which these nurses could not earn since they were scheduled off on Saturday,
- (B) Week-ends for nurses working the night shift be changed back to Sunday-Monday, as stated in the agreement.

Issue:

Since AFGE has filed grievances on the assignment of tours of duty of night nurses as it affects weekends off as well as scheduling for educational purposes, it is necessary for a decision to be made by the Chief Medical Director regarding whether these matters are grievable.

Discussion:

Under the Department of Veterans Affairs Labor Relations Improvement Act of 1991 (the Act), persons hired pursuant to Title 38, United States Code, have the right to engage in collective bargaining pursuant to the Federal Labor-Management Relations Statute, except as to any matter or question concerning or arising out of (1) professional conduct or competence, (2) peer review, or (3) the establishment, determination, or adjustment of employee compensation. 38 U.S.C. sect. 7422. The Act also authorizes the Secretary of Veterans Affairs, or designee, to decide whether a matter or question concerns or arises from any of these issues. The Chief Medical Director has been delegated authority to decide these matters. That decision is not subject to collective bargaining or subject to review by any other agency. Id.

