



DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

JUL 11 1994

Mr. J. A. Brinkers
Director
• VA Medical Center
Sheridan, WY 82801

In Reply Refer To:

Dear Mr. Brinkers:

I am responding to the issue raised concerning the enclosed grievance filed by Local 1219 of the American Federation of Government Employees.

Under 38 USC Section 7422, any matter affecting registered nurses hired pursuant to Title 38 and concerning or arising out of professional conduct or competence is outside the scope of collective bargaining and is not subject to review by any other agency. The law authorizes the Secretary, or delegatee, to determine the grievability of any question arising under its provisions. The Secretary has delegated to my office the authority to make such determinations, which are not subject to administrative review under the law.

Acting pursuant to this authority, I have determined that this grievance concerning a statement made by management in the registered nurse's proficiency involves professional conduct or competence.

The proficiency rating system is designed to provide the best care to patients by keeping employees informed on what is expected of them and the level of performance in the assignment. It is the only system for evaluating registered nurses in the performance of their job. Consequently, I believe this issue relates to professional competence or conduct. Accordingly, the issue raised in this grievance is outside the scope of bargaining under the "Department of Veterans Affairs Labor Relations Improve Act of 1991" because it concerns a matter or question arising out of professional competence or conduct.

Sincerely yours,

A handwritten signature in cursive script that reads "John T. Farrar".

John T. Farrar, M.D.
Acting Under Secretary for Health

Enclosures

Title 38 Grievance
Decision Paper

Facts:

At VA Medical Center Sheridan, Wyoming, bargaining unit employee, _____, R.N. alleges in her grievance that management violated the Interim Memorandum of Agreement between the American Federation of Government Employees (AFGE) National VA Council and the Veterans Administration (TAB A) by including in her proficiency "unsupported subjective statements regarding her performance."

A statement was contained in Ms. _____'s proficiency that "Ms. _____ often has valuable insight regarding unit problem issues, but does not follow a constructive problem solving approach nor does she suggest revisions/solutions in a positive and appropriate manner". Two examples cited were instances where Ms. _____ vented her anger about a change to her time schedule by emphatically writing "No" on the certified time. Also, her response to an E-mail message was non supportive. Regarding the latter descriptive material was sent via E-mail to Ms. _____ and other nurses regarding a new form and a response was requested. Ms. _____ merely noted in her response "smile & nod."

Issue: Since the AFGE local 1219 has filed a grievance concerning a registered nurse's proficiency, it is necessary for a decision to be made by the Under Secretary for Health whether this issue is grievable.

Discussion:

At the VAMC Sheridan, the AFGE has filed a grievance on behalf of _____ R.N. alleging that the nurse's proficiency has unsupported subjective statements regarding her performance. "Ms. _____ often has valuable insight regarding unit problem issues, but does not follow a constructive problem solving approach nor does she suggest revisions/solutions in a positive and appropriate manner". For example, Ms. _____ vented her anger about a change to her time schedule by emphatically writing "NO" on the certified time. Also, her response to an E-mail message was non-supportive. Regarding the latter, descriptive material was sent via E-mail to Ms. _____ and other nurses regarding a new form and a response was requested. Ms. _____ merely noted in her response "nod & smile." The performance rating system is the vehicle for evaluating a registered nurse's professional conduct & competence. Statements made in a proficiency report concern the competency of staff at a facility and are therefore beyond the scope of collective bargaining.

Under Public Law 102-40, the "Department of Veterans Affairs Labor Relations Improvement Act of 1991" (The Act), (TAB B) employees 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 USC 7422).

The Act also authorizes the Secretary of Veterans Affairs, or designee, to decide any issue of whether a matter or question concerns or arises from any of these issues.

(TAB C) The Secretary's decision is not subject to collective bargaining or subject to review by any other agency. Id.

Recommendation:

We recommend that the Under Secretary for Health determine that the issue of a registered nurse proficiency concerns or arises out of professional conduct or competency and the establishment, determination, or adjustment of employee compensation under Title 38, United States Code and is outside the scope of collective bargaining.

Approve Recommendation ✓

Disapproved Recommendation _____

John T. Farrar

John T. Farrar, M.D.
Acting Under Secretary for Health

7-6-94

Date