



DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington DC 20420

MAY 19 2008

Roger Johnson
Director
VA Connecticut Healthcare System
950 Campbell Ave.
West Haven, CT 06516

In Reply Refer To:

Karin T. Thompson, APRN, BC
American Federation of Government Employees
Local 2138
950 Campbell Avenue, Bldg. 6, Room 127
West Haven, CT 06516

Dear Mr. Johnson and Ms. Thompson:

I am responding to the issue raised in your memoranda of January 3, 2008, and January 9, 2008, respectively, concerning the grievance filed by AFGE Local 2138 regarding funding for training and associated travel for Advance Practice Registered Nurses (APRN) at the West Haven VA Medical Center.

Pursuant to delegated authority, I have decided on the basis of the enclosed decision paper that the issue presented by this grievance is not a matter or question concerning or arising out of professional conduct or competence and does not raise issues concerning or arising out of the establishment of, determination, or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422(b).

Sincerely yours,

A handwritten signature in black ink that reads "Michael J. Kussman". The signature is written in a cursive style.

Michael J. Kussman, MD, MS, MACP
Under Secretary for Health

Enclosure

Title 38 Decision Paper
VAMC West Haven, CT
VA 08-0_

On April 7, 2006, the American Federation of Government Employees (AFGE), Local 2138 filed a Step 2 Grievance on behalf of Advance Practice Registered Nurses (APRN) at the VA Connecticut Health Care System (VA CT HCS) requesting travel and tuition reimbursement for continuing education hours. (Attachment A) The grievance challenged VA CT HCS' policy of limiting reimbursement to \$200 per nurse per year for continuing education credits required to maintain a nurse's state licensure.¹ The grievance alleged that this policy violated Articles 2, 16 and 34 of the VA AFGE Master Agreement, and most specifically Article 34, Section 3.A., which provides that "[t]he Department will pay all expenses, including tuition and travel, in connection with training required by the Department to perform the duties of an employee's current position or a position to which an employee has been assigned." The grievance further alleged that APRNs were subject to a \$200 limitation "when other employees without certifications for licensure received full travel reimbursement." (Attachment A, page 1) As remedies, the Union requested that the VAMC: (1) "adhere to policy" and not limit travel funding to \$200; (2) make whole any APRN who was not allowed full travel reimbursement payment of all expenses for training required to maintain certifications for the Year 2003 through the date of settlement of the grievance; and, (3) allow Union membership on committees which set relevant policy and make decisions on employee tuition and travel requests and approvals. (Attachment A, page 2)

In its response to the grievance, Management informed the Union that it did not require or mandate APRNs to travel to obtain continuing education hours, which could be obtained without traveling through the VA CT HCS' in-house educational offerings or through online programs. (Attachment B, ¶¶ 1.c. and 1.d.) Management explained that it limited travel reimbursement to \$200 for discretionary courses but provided full funding for courses that the VA CT HCS specifically required employees to attend.. In addition, Management explained that "all funding is dependent upon the availability of funding and training priorities."

On April 28, 2006, the Union elevated its grievance to Step 3. (Attachment C) The Union argued that travel is often necessary to obtain relevant coursework to

¹ The \$200 cap was not formally stated in VA CT HCS policy, but was based on paragraphs IV.B.1. and IV.C.1 of the facility's Healthcare System Policy 118A-4, which provide, respectively, that "[t]he cost of registration for [continuing education] activities outside VA Connecticut Healthcare System will be fully or partially funded depending on available funds" and "[t]ravel and per diem costs associated with a continuing education program will be partially or fully funded depending on availability of travel funds." (Attachment B)

maintain various advance practice certifications and licensure. The Union supported its request to have Union membership on committees that set relevant policy and make decisions on employee tuition and travel requests and approvals, by alleging that the decisions on travel and tuition are being made by individuals who are not familiar with licensure and regulation requirements. (Attachment C, ¶ 6)

On May 27, 2006, Management denied the Step 3 grievance (Attachment D) Management explained that “[w]hile VA Connecticut requires a current unrestricted license, it is the State that mandates the requirements for the license.” In addition, Management explained that the Union is already involved in committees which impact on employee training and/or orientation.

On June 30, 2006, the Union invoked arbitration. (Attachment E)

By memorandum dated January 3, 2008, the Director of the VA CT HCS requested that the Under Secretary for Health (USH) determine that the Union’s grievance involved issues concerning or arising out of professional conduct or competence and was therefore not grievable under 38 U.S.C. § 7422. (Attachment F)

In his memorandum, the Director explained that the VAMC has provided partial funding for continuing education credits for APRNs in accordance with Article 34, section 3 of the VA/AFGE Master Agreement.² The Director further stated that “[f]unding the full cost of training would be cost-prohibitive and would not meet the needs of the Agency for required training of staff.” The Director explained that VA Handbook 5005/14, Part 2, Appendix G6 and VA Handbook 5021 require all RNs to have and maintain a valid state license as a qualifying and continuing condition of employment, but that “[t]he State that issues the license sets the continuing education requirements to maintain the state issued license.” (Attachment F, ¶ 2)

On January 9, 2008, the Union submitted a letter to the USH arguing against a determination that the issues raised in the referenced grievance are outside the scope of collective bargaining under 38 U.S.C. § 7422. (Attachment G) The Union argued the issues raised in the grievance are a “simple matter of fair reimbursement for required training of employees.” The Union further argued there is a lack of “clear procedures for determining fair and equitable [travel and tuition] reimbursement” at the VAMC. In addition, the Union alleged that Management had violated of Article 34, section 3A of the VA/AFGE Master Agreement, by refusing to pay the full amount of the required training to maintain certification to renew an annual APRN license.

² Management at the VAMC has paid \$200 to employees for non-required courses, and required courses are fully funded for work related training. Payment is dependent on the availability of funding and training priorities.

PROCEDURAL HISTORY:

The Secretary has delegated to the USH the final authority in the VA to decide 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).

ISSUES:

1. Whether the decision to limit reimbursement for training tuition and associated travel to \$200 per year for APRNs to obtain continuing education credits is an issue of professional conduct or competence within the meaning 38 U.S.C. § 7422(b).
2. Whether the decision to limit reimbursement for training tuition and associated travel to \$200 per year for APRNs to obtain continuing education credits raises issues concerning or arising out of the establishment of, determination, or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422(b).

DISCUSSION:

The Department of Veterans Affairs Labor Relations Act of 1991, codified at 38 U.S.C. § 7422, granted collective bargaining rights to Title 38 employees in accordance with Title 5 provisions, but specifically excluded from the collective bargaining process matters or questions concerning or arising out of professional conduct or competence (i.e., direct patient care and clinical competence), peer review or employee compensation as determined by the USH.

The Union's grievance does not concern the VA CT HCS' requirement that all RNs have and maintain a valid state license as a condition of continued employment under VA policy (VA Handbook 5005/14, Part 2, Appendix G6). (Attachment H; I; J) Rather, the Union is challenging VA CT HCS' policy of limiting reimbursement to \$200 per nurse per year for continuing education credits that are required by individual state licensing boards. Therefore, a professional conduct or competence determination within the meaning of 38 U.S.C. § 7422 is not at issue.

The Director's primary argument is that funding the full cost of training and related travel would be cost prohibitive and would not meet the Agency's needs for the required training of staff. (Attachment F, ¶ 3). While this budgetary issue is a legitimate concern for VA CT HCS Management, because reimbursement for budgetary expenses is not provided for in the Title 38 employee compensation

authorities, it is likewise not an issue arising out of or concerning the establishment, determination or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422.

RECOMMENDED DECISION:

That the decision to limit reimbursement for training tuition and associated travel to \$200 per year for APRNs to obtain continuing education credits does not involve an issue of professional conduct or competence within the meaning 38 U.S.C. § 7422(b).

APPROVED X

DISAPPROVED _____

That the decision to limit reimbursement for training tuition and associated travel to \$200 per year for APRNs to obtain continuing education credits does not concern or arise out of the establishment of, determination, or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422(b).

APPROVED X

DISAPPROVED _____



Michael J. Kussman, MD, MS, MACP
Under Secretary for Health

5/20/08
Date