

**Title 38 Decision Paper
Department of Veterans Affairs (VA)
Washington DC VA Medical Center**

FACTS

In October 2012, management at the Washington DC VA Medical Center (Medical Center), noting several clinical deficiencies, rated one of its radiologists “Unsatisfactory” during his annual review. (Exhibit 1). On October 16, 2012, the radiologist’s privileges were presented to the Medical Center’s Professional Standards Board (PSB) and its Medical Executive Committee (Executive Committee)¹ for renewal. (*Id.*).

The PSB recommended that the Executive Committee renew the radiologist’s privileges for 6 months in order to allow for an outside review of the radiologist’s nuclear medicine reports. (*Id.*).

In January 2013, the PSB convened to review the results of the outside review. As a result, the Medical Center Director suspended the radiologist’s privileges in March 2013, pending further review. (*Id.*). The Medical Center Director sent the radiologist a letter explaining that his privileges were summarily suspended “upon the recommendation of the Chief of Staff as concerns have been raised to suggest that aspects of [your] clinical practice do not meet accepted standards of practice and potentially constitute an imminent threat to patient welfare.” (Exhibit 25).² The radiologist was assigned to special projects and administrative non-patient care duties while the Medical Center further reviewed his performance. (*Id.*). In April 2013, pending the outcome of the Medical Center’s review of his performance, the Medical Center extended the suspension of his privileges. (Exhibit 1).

On May 15, 2013, the PSB reconvened and recommended that the radiologist be placed on a Focused Professional Practice Evaluation (FPPE). The FPPE consisted of a graduated 90-day evaluation with three phases and began on July 8, 2013. (*Id.*).

At the end of June 2013, the radiologist met with the Medical Center’s Chief of Staff and Chief of Radiology to discuss the FPPE. (*Id.*).

In early August 2013, the radiologist was notified that he successfully completed the first 30 days of the FPPE and his privileges were reinstated on August 15, 2013. (*Id.*).

In March 2013, the 14th District of the National VA Council, American Federation of Government Employees (Union) submitted a series of requests for information under

¹The Medical Executive Committee is sometimes referred to as the Executive Committee of the Medical Staff.

²Clinical privileges may be summarily suspended when the failure to take such action may result in an imminent danger to the health of any individual. Summary suspension of privileges pending comprehensive review and due process is not reportable to the National Practitioner Data Bank. (Exhibit 14).

5 United States Code (U.S.C.) § 7114(b)(4). (*Id.*).

The first of their requests, dated March 4, 2013, sought the following information about the Medical Center's review of the radiologist's performance:

1. Please indicate the reason the [sic] Dr. [redacted] is currently being reviewed/investigated. Provide all notes, letters, and other documents relating to the review/investigation.
2. Provide the exact process being used for this review/investigation, as well as any related documentation.
3. Please indicated [sic] how long the review/investigation will be conducted and who will be conducting it. Please indicate whether it is being completed by a neutral third party or VAMC staff.
4. Indicate what specific materials and work products are being reviewed and whether the reviewer/investigator is looking at something other than what was already reviewed by the PSB.
5. Please provide a copy of VHA Handbook 1100 19 [sic] and the Medical Staff Bylaws.

(Exhibit 2).

The Union described its particularized need for the requested information, as follows:

Our union needs this information to expand the evidence available for grievance and arbitration. Additionally, our union needs this information to determine whether the agency is conducting a proper review, or whether the employee is being treated unfairly, in a way that violates the MCBA or other laws and regulations. Our union will be harmed if the information requested is not provided because we will be unable to show a violation. Our union will be helped if the information requested is provided because we will be able to prove conclusively to a third party that the VAMC has violated the MCBA. The requested information will enable our union to fulfill its representational responsibilities to represent employees under the Statute.

(*Id.*).

On March 14, 2013, ten days before the Medical Center responded to the first request, the Union submitted a second request for information. (Exhibit 3). The second request included requests similar to the first one, with additional detail, including a request for information about the details of the review being conducted (i.e., who/what/when/where/how), details of the age, race, and national origin of the radiologist's supervisors, the supervisors' emails about the radiologist, and information regarding whether the supervisor had any personal non-patient care related problems with the radiologist. (*Id.*). The Union's statement of particularized need was identical to the statement in the Union's March 4, 2013, information request. (*Id.*).

On April 4, 2013, the Medical Center responded to the information requests. (Exhibit 4). It provided the Union copies of VHA Handbook 1100.19, "Credentialing and Privileging," and the Medical Center's Medical Staff Bylaws (Bylaws). (Exhibit 26). It also provided information about Dr. and Dr. dates of hire and supervisory authority. (*Id.*) It did not provide any further documents identified in the March 4 request, or numbers 1-5 of the March 14 request, explaining that "[t]he review is part of an ongoing investigation and all related documents and records are pre-decisional and premature release would compromise the ongoing investigation. When the investigation is complete and a decision has been reached, the agency will make additional documents available." (*Id.*) Additionally, the Medical Center claimed that some of the requests were vague and required clarification, and that other requests related to protected categories. (*Id.*)

The Union and the Medical Center exchanged several emails in April 2013 regarding the Medical Center's failure to fully respond to the Union's information requests. (Exhibit 5, Exhibit 6). The Medical Center did not provide the Union all of the information requested because the information related to an ongoing investigation and professional competency or conduct review, and the information requests were either onerous, required extensive review, or the documents were protected and not releasable under the Privacy Act. (Exhibit 6).

On April 26, 2013, the Union filed an Unfair Labor Practice (ULP) charge with the Federal Labor Relations Authority (FLRA), based on the Medical Center's refusal to produce the information and documents it requested.³ (Exhibit 7).

On June 20, 2013, the Medical Center notified the Union that it was not entitled to obtain information related to professional conduct and competence through a 5 U.S.C. § 7114 information request. (Exhibit 8). It also stated that the matter was excluded from collective bargaining under 38 U.S.C. § 7422. The Medical Center requested to meet with the Union to "try to resolve this issue informally." (*Id.*)

After meeting with the Medical Center's Human Resources staff on June 28, 2013, the Union agreed to narrow its request to basic information about the review process. (Exhibit 1). On July 17, 2013, the Union forwarded an email to the Medical Center with 35 separate questions concerning the reviews of the radiologist.⁴ (Exhibit 9).

On July 25, 2013, the Medical Center responded to the FLRA concerning the ULP charge the Union filed. (Exhibit 10). The Medical Center explained that it viewed the Union's request as excluded by 38 U.S.C. § 7422, that the parties were attempting to resolve the matter informally, and that if their informal attempts failed, the Medical Center would submit a formal request for a 38 U.S.C. § 7422 determination to the

³The Union amended its ULP on June 14, 2013, to reflect that the ULP was filed by AFGE/National VA Council 14th District, and not by AFGE Local 17. (Exhibit 12).

⁴The 35 questions asked who, how, and why the Medical Center's reviews were initiated, who participated in the reviews, what processes were followed, and what work products were reviewed. The request also sought the findings and conclusions of the reviews. (Exhibit 9). Only the March 4 and 14, 2013, requests for information were addressed in the Union's ULP filings. (Exhibit 7, Exhibit 12).

Secretary. (*Id.*). The Medical Center requested that the FLRA stay further consideration of the charge until the matter was resolved informally or formally. (*Id.*).

On July 26, 2013, the Medical Center notified the Union that it intended to submit a request for a 38 U.S.C. § 7422 determination regarding the Union's information requests. The Medical Center reiterated that "the information the Union seeks about the process and review of Dr. _____ competence is exempt from collective bargaining and the grievance process under title 38 U.S.C. 7422(b)." (Exhibit 11).

The Medical Center filed a formal request for a 38 U.S.C. § 7422 determination on September 19, 2013.⁵ (Exhibit 1). AFGE filed a response to the Medical Center's request on September 24, 2013. (Exhibit 13).

AUTHORITY

The Secretary has the final authority in the agency 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).

ISSUE

Whether an Unfair Labor Practice charge claiming the Medical Center failed to provide information requested pursuant to 5 U.S.C. § 7114(b)(4) relating to performance reviews of a title 38 radiologist involves a matter or question concerning or arising out of peer review or professional conduct or competence (i.e., direct patient care or clinical competence) within the meaning of 38 U.S.C. § 7422(b) and thus exempted from collective bargaining.

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. 38 U.S.C. § 7422.

VA relies on a number of peer review processes to ensure that its health care providers are qualified to perform their work. In this case, the Medical Center's PSB and Executive Committee reviewed the performance of one of its radiologists over the course of several months. (Exhibit 1, Exhibit 25). During that period, the radiologist's clinical practice privileges were suspended, in accordance with the procedures set out in VHA

⁵The Medical Center's request for determination is dated September 3, 2013. The Department's Office of Labor-Management Relations received the request on September 19, 2013. (Exhibit 1).

Handbook 1100.19, "Credentialing and Privileging"⁶ and Article VI, Section 4 of the Bylaws. (*Id.*, Exhibit 26). Ultimately, the Medical Center decided to place the radiologist on an FPPE.⁷ (*Id.*). An FPPE is a "time-limited period during which the medical staff leadership evaluates and determines the practitioner's professional performance." (Exhibit 14, Exhibit 26). In this case, the radiologist's FPPE consisted of a graduated 90-day evaluation with three phases.⁸ (Exhibit 1).

Upon learning that the Medical Center was reviewing the radiologist's performance and had summarily suspended his privileges, AFGE submitted information requests asking for documentation concerning the Medical Center's peer review processes. (Exhibit 7, Exhibit 12). For the most part, the Medical Center refused to provide the requested information, basing its refusal on the nature of peer review processes. Because matters or questions concerning or arising out of professional conduct or competence or peer review of title 38 professionals are excluded by 38 U.S.C. § 7422 from the collective bargaining process, the Medical Center concluded that it was under no obligation to supply the information the Union requested. (Exhibit 10, Exhibit 11).

Determining the validity of the Medical Center's position requires discussion of two separate issues. First, do the review processes involving the Medical Center's PSB and Executive Committee qualify as peer review or professional conduct or competence; and second, do the Union's requests for information implicate collective bargaining or the parties' negotiated grievance procedure, such that the Secretary is authorized to determine that the matter is excluded under 38 U.S.C. § 7422.

A. The Medical Center's Clinical Review Processes

1. Professional Standards Boards (PSB)

PSBs, by definition, are engaged in peer review. Under the Bylaws, the PSB acts as a credentials committee and recommends appointment and privileging actions⁹ to the Chief of Staff and Medical Center Director through the Medical Executive Committee.

⁶VHA Handbook 1100.19, ¶ 14, outlines the Department's procedures for establishing, reviewing, monitoring, renewing, suspending, reducing, and revoking a Title 38 health care professional's privileges. (Exhibit 14).

⁷An FPPE typically occurs at the time of initial appointment to the medical staff, or when new or additional privileges are granted. It may be used when a question arises regarding a currently privileged practitioner's ability to provide safe, high-quality patient care. (Exhibit 14).

⁸The radiologist and his Union representative were notified on November 13, 2013, that the radiologist successfully completed the FPPE. (Exhibit 15).

⁹Clinical privileging is:

The process by which the institution grants the practitioner permission to independently provide specified medical or other patient care services, within the scope of the practitioner's license and/or an individual's clinical competence, as determined by peer references, professional experience, health status (as it relates to the individual's ability to perform the requested clinical privileges), education, training, and licensure and registration. (Exhibit 14).

(Exhibit 26). Consistent with VA policy, VA Handbook 5005, Part II, Chapter 3, Section C(4), the PSB is composed of a Chairman, which is the Chief of Staff, and at least two members chosen from the Medical Executive Committee. (Exhibit 26, Exhibit 16). In accordance with the Bylaws, clinical privileges are reviewed by the facility's PSB. (Exhibit 26). Article VI (Delineation of Privileging and Reprivileging Process) of the Bylaws provides that:

Biennial re-determination of clinical privileges and any change in same shall take place at a time designated by the Chief of Staff within a two year period of the last reprivileging, and shall be based upon an evaluation of the individual's mental and physical health status as well as observation of care provided, review of records of patients treated in this or other hospitals, and review of the records of the Medical Staff which document and evaluation of the extent and quality of the member's participation in the delivery of medical care....

...

Each service will establish a mechanism to assure that individuals with clinical privileges provide services within the scope of individual privileges granted and at a level consistent with quality patient care. Ongoing Professional Practice Evaluation (OPPE) information is factored into the decision to maintain, revise or revoke existing clinical privileges. Data will be collected at a minimum twice per year. Focused Professional Practice Evaluations (FPPE) are completed for new providers and to support requests for additional or new privileges or for cause.

(Exhibit 26).

The Bylaws also state that "re-credentialing"¹⁰ is contingent upon an ongoing peer review which includes at a [] minimum, documentation of professional competence. Peer Review may include medical record review, assessment of educational and/or research activities, and evaluation of clinical practice patterns. The Service Chief is responsible for this process." (Exhibit 26). The Bylaws further state, "[w]henver the clinical performance of any practitioner with clinical privileges is considered to be lower than the acceptable standards of practice, or if there is concern regarding patient safety or less than satisfactory specific practice patterns, disciplinary action or performance based privilege changes may be considered." (Exhibit 26).

In previous decisions, the Department has determined that the clinical review of a title 38 employee's performance, including review by a facility's PSB, falls within 38 U.S.C. § 7422's peer review or professional conduct or competence exclusions. In Jackson VAMC (August 27, 1992), the decision concerned whether union representation at a Summary Review Board (SRB),¹¹ a type of PSB convened to determine whether, based

¹⁰The Bylaws erroneously reference "re-credentialing" here when it should reference "re-privileging." This Article and Section discusses only clinical privileges, not credentialing. There is no "re-credentialing" process, as the practitioners only have to *maintain* their credentials, but seek re-privileging every 2 years. (Exhibit 26).

¹¹SRBs are discussed in VA Handbook 5021, Part III, Chapter 1, ¶ 3. (Exhibit 18). Notably, the policy states that, "*Because summary reviews deal with issues related to professional competence or conduct and peer review, a union representative is not entitled to be present at a summary review except when serving as the employee's personal representative.*" (emphasis in original). (*Id.*)

on professional competence, a probationary title 38 employee, should be retained or removed. (Exhibit 17). The Union asserted that the registered nurse being reviewed by the SRB was entitled to union representation before the SRB. In holding that the matter was excluded from the grievance procedure, the Chief Medical Director, acting on behalf of the Secretary, concluded that, "The Summary Review Board is the principal component of the peer review process utilized to determine the competence of a probationary registered nurse. Any matter relating to the Summary Review Board including the right to union representation is related to professional competence or conduct and the peer review process." (*Id.*).

In a more recent 38 U.S.C. § 7422 decision, the Secretary addressed a related question, whether the Union was entitled to represent bargaining unit employee witnesses at a SRB hearing. Hampton VAMC (July 15, 2011). (Exhibit 19). The Secretary found that, "[c]onsistent with the Agency's authority to limit representation in peer review proceedings, the Agency has limited union representatives' access to summary review proceedings to that portion of the proceeding at which the employee subject to the review is present. There is no Agency provision that allows Union representation for bargaining unit employees who are witnesses before a summary review proceeding." (*Id.*); see also Anchorage VAMC (December 17, 2004), where the Under Secretary for Health determined that a grievance over the limitation of the Union's access to a PSB summary review proceeding raises issues of peer review within the meaning of 38 U.S.C. § 7422. (Exhibit 20).

2. Executive Committee of the Medical Staff

The Executive Committee of the Medical Staff (Executive Committee), under the Bylaws, is chaired by the Chief of Staff and is composed of the Deputy Chief of Staff, Chiefs of Medicine, Surgery, Mental Health, Neurology, Dental, Radiology, Pathology and Laboratory Medicine, Physical Medicine and Rehabilitation, Geriatrics and Long Term Care, Nursing, and the elected Medical Staff Representative. (Exhibit 26).

In accordance with VHA Handbook 1100.19, the Bylaws outline that the Executive Committee is centrally involved in a variety of the Medical Center's privileging decisions. The Executive Committee is responsible for making recommendations to the Medical Center Director regarding a number of issues concerning the facility's medical staff, including, but not limited to the following: (1) structure of the medical staff, (2) mechanisms used to review credentials and delineate clinical privileges, (3) recommendations for delineated clinical privileges for each eligible individual, (4) criteria for granting clinical privileges for the members of each service, (5) all clinical staff functions, and (6) reports from committees, services, and assigned activity groups. (*Id.*).

While PSB is responsible for reviewing a practitioner's initial application form for appointment, PSB makes the recommendation to the Executive Committee, which then makes the recommendation to the Chief of Staff and Medical Center Director. (Exhibit 26). The Executive Committee is also involved in the privileging and reprivileging process. The Bylaws state "[c]linical privileges are applied for by the practitioner, and

approved by the Medical Center Director upon recommendation of the Service Chief, the [PSB] and the Medical Executive Committee.” (Exhibit 26). This is consistent with VHA Handbook 1100.19, which provides that a practitioner’s request for privileges is initially reviewed by a credentialing committee (e.g. PSB) and then submitted with recommendations to the Executive Committee. (Exhibit 14).

The Executive Committee is also instrumental in the FPPE process: “The criteria for the FPPE process are to be defined in advance, using objective criteria accepted by the practitioner, recommended by the Service Chief and Executive Committee of the Medical Staff as part of the privileging process and approved by the Director... . Results of the FPPE must be documented in the practitioner’s provider file and reported to the Executive Committee of the Medical Staff for consideration in making the recommendation on privileges and other considerations.” VHA Handbook 1100.19, Section 14(g)(3) and (4). (Exhibit 14).

Here, when the Medical Center first learned that there might be a clinical concern with the radiologist’s interpretations of images and report of Nuclear Medicine studies, the Executive Committee played a prominent, ongoing role in the facility’s review process and ultimate decision to place the radiologist on a FPPE. (Exhibit 1). The Executive Committee, based on its membership, is a peer review deliberative body and the issues it reviewed in this case involved the clinical competence of the radiologist in question.

The Medical Center’s review processes in this case involve peer review or professional conduct or competence (direct patient care or clinical competence). Because the Union’s 5 U.S.C. § 7114(b)(4) information requests seek information concerning the details of the Medical Center’s reviews and review processes, the requests may be excluded under 38 U.S.C. §7422 if they also relate to collective bargaining or the parties’ negotiated grievance procedure.

B. Information Requests and the Parties Negotiated Grievance Procedure

The Union’s March 4 and March 14, 2013, information requests include an identical statement of particularized need. (Exhibit 2, Exhibit 3). The statement is primarily focused on the Union’s use of the information in filing a grievance challenging aspects of the Medical Center’s reviews. (*Id.*). The Union states that, “Our union needs this information to expand the evidence available for grievance and arbitration.” The request further states that, “Our union will be helped if the information requested is provided because we will be able to prove conclusively to a third party that the VAMC has violated the [parties’ Master Agreement].” (*Id.*). A violation of the parties’ Master Agreement is ordinarily addressed by filing a grievance, and when the issue is unresolved after successive meetings between management and the Union, the parties proceed to arbitration before a third party. That dispute resolution option, however, is foreclosed when the underlying issue, as is the case here, involves a matter concerning or arising out of peer review or the professional conduct or competence of a title 38 health care professional.

In 1993, the FLRA resolved a case involving a ULP charge, in which the Union claimed that the Long Beach Medical Center failed to provide information requested under 5 U.S.C. § 7114(b)(4). Department of Veterans Administration, Long Beach VA Medical Center, Long Beach, California, 48 F.L.R.A. 970 (1993). (Exhibit 22). The Union initially filed a grievance arguing that the facility failed to timely prepare annual proficiency ratings for title 38 registered nurses. In connection with the grievance, the Union requested that the facility provide it with the nurses' last proficiency ratings and due dates, the names of employees that management had determined were eligible for promotions, and the names of four employees whom management had determined were likely to earn promotions. (*Id.*). The facility contended that the grievance was precluded by 38 U.S.C. § 7422, and as a result, it was under no obligation to respond to the Union's information request. The FLRA agreed with the facility, stating, "Where, as here, the grievance was outside the scope of the negotiated grievance procedure, there is no basis under the Statute on which to require the [facility] to furnish the information." (*Id.*). It further held:

[M]atters pertaining to professional conduct or competence, peer review, or the establishment, determination, or adjustment of employee compensation are specifically excluded, by law, from coverage under negotiated grievance procedures. Consequently, to the extent the [Union] sought information in connection with a matter that could not be pursued under the negotiated grievance procedure, we find that the [facility] did not violate the Statute by refusing to provide such information.

(*Id.*).

In the case at hand, if the Union had filed a grievance complaining that the radiologist's privileges were improperly suspended, and followed with an information request attendant to the grievance, there would be no need for further inquiry into this matter. Based on the FLRA's holding in the Long Beach case, the Union would not be entitled to information concerning the Medical Center's performance review processes because the review processes may not be challenged through the negotiated grievance procedure. They are matters pertaining to peer review or professional conduct or competence and thus would be excluded from collective bargaining under 38 U.S.C. § 7422. Given the Union's request relates to peer review or professional conduct or competence and it references the Union's need for the information in connection with filing a grievance, the request can be excluded from collective bargaining under 38 U.S.C. § 7422.

Although the Union's particularized need statement is focused primarily (if not exclusively) on preparing a future grievance, it includes broader references, as well. The statement complains of potential violations of "the [parties' Master Agreement] or *other laws and regulations*, and broadly states, "[t]he requested information will enable our union to fulfill its representational responsibilities to represent employees under the Statute." (emphasis added). (Exhibit 7, Exhibit 12). Assuming, for argument's sake,

that the Union can demonstrate that its 5 U.S.C. § 7114(b)(4) information request is not limited to preparing for a potential grievance, and that there are other valid avenues the Union can pursue to challenge the Medical Center's peer review processes, we will consider whether the Union's information request implicates collective bargaining, as referenced in 38 U.S.C. §§ 7422(a) and (b).

C. The Relationship Between Section 7114(b)(4) Information Requests and Collective Bargaining

The Federal Service Labor-Management Relations Statute, Section 7114(a)(1), describes the Union's entitlement to "negotiate collective bargaining agreements covering all employees in the unit." Section 7114(b) outlines the five obligations the parties must meet in order to fulfill their duty to "negotiate in good faith." Figuring prominently among the obligations is the Department's duty under section 7114(b)(4) to provide certain requested information to the Union "reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining." 5 U.S.C. § 7114(b). According to the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit, the 7114(b)(4) obligation is an essential and integral component of collective bargaining, "[I]n collective bargaining, the duty to request and supply information is *part and parcel* of the fundamental duty to bargain." American Federation of Government Employees, Local 1345 v. FLRA, 793 F.2d 1360, 1363 (D.C. Cir. 1986) (emphasis added). (Exhibit 23).

The D.C. Circuit Court, in a decision involving section 7114(b)(4) information requests, emphasized that the Union's right to information is statutorily linked to collective bargaining. The Court explained that information requests are tied to '[t]he duty of an agency and an exclusive representative to negotiate in good faith,' 5 U.S.C. Sec. 7114(b), and then delineates, precisely, what information shall be disclosed: 'data . . . necessary for . . . discussion, understanding, and negotiation of subjects within the scope of collective bargaining.'" U.S. Dep't of Veterans Affairs v. FLRA, 1 F.3d 19 (D.C. Cir. 1993) (Amarillo). (Exhibit 24). After first determining that the Union had no right to engage in collective bargaining with the Department, the Circuit Court in Amarillo concluded that the Department was under no obligation to comply with an information request concerning clinical staff meetings involving title 38 employees.¹² (*Id.*).

Supplying information under 5 U.S.C. § 7114(b)(4) is an important part of what an agency must do in order to comply with its duty to bargain in good faith, and bargaining in good faith is at the heart of collective bargaining under the Statute. Supplying requested information, when appropriate, is "part and parcel" of, and "explicitly tied" to, the collective bargaining process referenced in 38 U.S.C. §§ 7422(a) and (b). Accordingly, the Union's request relates to peer review or professional conduct or competence and the request for information

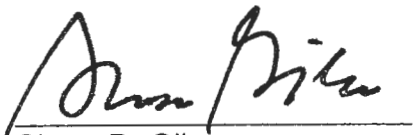
¹²Although the Amarillo decision involves actions that predate the 1991 statutory amendments that added section 7422 to title 38, its discussion of 7114(b)(4) information requests and their limits to collective bargaining are instructive here. (Exhibit 24).

implicates collective bargaining, which may be excluded under 38 U.S.C. § 7422 from collective bargaining.

RECOMMENDED DECISION

The Medical Center was under no obligation to produce the information requested by the Union. The performance reviews conducted by the Medical Center are peer review processes, or alternatively, involve assessments of the professional conduct or competence of a title 38 health care professional. The Union's information requests consist of questions and document requests concerning the Medical Center's peer review processes. The requests are excluded from mandatory disclosure because they either relate to preparation of a grievance or implicate the collective bargaining process, and as such, are matters or questions concerning or arising out of a 38 U.S.C. § 7422(b) exclusion. Accordingly, the ULP charge claiming that the Medical Center failed to provide information requested pursuant to 5 U.S.C. § 7114(b)(4) relating to performance reviews of a title 38 radiologist involves a matter or question concerning or arising out of peer review or professional conduct or competence and is thus excluded under 38 U.S.C. § 7422(b).

APPROVED/DISAPPROVED



Sloan D. Gibson
Acting Secretary of Veterans Affairs

6/9/14

Date