

OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE AIR FORCE, 56TH MEDICAL GROUP HOSPITAL,
MACDILL AIR FORCE BASE, FLORIDA

Respondent

and

Case No.
AT-CA-30958

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 547
Charging Party

Major Phillip G. Tidmore For the Respondent

Richard S. Jones, Esquire For the General Counsel
Before: BURTON S. STERNBURG Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. 7101, etseq. and the Rules and Regulations issued thereunder.

Pursuant to a charge filed on May 27, 1993, by American Federation of Government Employees, Local 547, (hereinafter called the Union), against the Department of the Air Force, 56th Medical Group Hospital, MacDill Air Force Base, Florida, (hereinafter called the Respondent), a Complaint and Notice of Hearing was issued on December 1, 1993, by the Regional Director for the Atlanta, Georgia Regional Office, Federal Labor Relations Authority. The Complaint alleges that the Respondent violated Sections 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute, (hereinafter called the Statute), by changing the job duties of bargaining unit employee Elaine Konersman, a Registered Nurse, without first notifying the Union and affording it the opportunity to negotiate over the impact and manner of implementation of the changes.

A hearing was held in the captioned matter on February 8, 1994, in Tampa, Florida. All parties were afforded the full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues involved herein. Counsel for the General Counsel and Counsel for Respondent filed post-hearing briefs on April 11 and April 7, 1994, respectively, which have been fully considered.

Upon the basis of the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions and recommendations.

Findings of Fact

The Union is the exclusive representative of a unit of Respondent's employees working at MacDill Air Force Base, Florida. The bargaining unit includes, among others, Registered Nurses and Nursing Assistants.⁽¹⁾

In anticipation of the scheduled opening of an Ambulatory Surgical Unit (ASU) for purposes of treating patients requiring same-day surgery, Respondent on April 6, 1992, hired Ms. Elaine Konersman, a Registered Nurse, to work in the ASU Gastroenterology Clinic (GI). At approximately the same time, Respondent also hired Mr. David Watts, a Nursing Assistant, to help Ms. Konersman. Mr. Watts was hired as a GS-5 and Ms. Konersman was hired as a GS-9.

Inasmuch as Ms. Konersman was hired to work in the GI section and recovery room of ASU where No. IV sedations were administered, she was required to be certified in Advanced Cardiac Life Support (ACLS). Having been certified in Pediatric Advanced Life Support (PALS), the pediatric version of ACLS, Respondent's selecting official reasoned that Ms. Konersman would have no trouble passing the ACLS. Accordingly, Ms. Konersman was hired with the understanding that she would have to pass the ACLS in order to perform the restricted GI and recovery room nursing duties.

Since Ms. Konersman, due to the lack of ACLS certification, was not immediately available to perform the No. IV sedations and recovery room duties for which she was hired, she performed, among other general nursing duties, preadmission patient assessments⁽²⁾ on the individuals who were scheduled for future surgery in the GI section of the ASU. In this latter connection, while Ms. Konersman testified that prior to October 7, 1992, when she went on sick leave which ended on November 23, 1992, she performed all the preadmission patient assessments for the GI unit, she did acknowledge that Nursing Assistant Watts, following the opening of the GI section of the ASU, underwent training by Respondent to perform preadmission patient assessments.⁽³⁾

At the time that the ASU was established a position entitled "assessment nurse" was created. This position, which appears to have covered all preadmission assessments other than those for the GI section, was manned by Major Pat Woods, a military nurse. Major Woods left MacDill Air Force Base sometime during the period October 7, 1992 - November 23, 1992, while Ms. Konersman was out on sick leave. Her duties with respect to preadmission assessments were assumed by Nursing Technicians.

On November 23, 1992, upon her return from sick leave, Ms. Konersman was called into a "counseling session" wherein she was reminded that she had not completed the ACLS training and also informed about some changes in patient assessments which took place during her absence. In this latter connection Respondent's representatives informed Ms. Konersman that Nursing Assistants had been assigned the task of performing the preadmission patient assessments throughout the entire ASU, including the GI section.

In connection with the above described meeting, Captain Barbara Henning, Charge Nurse, ASU, GI section, one of Ms. Konersman's superiors, wrote a "Record of Counseling" which reads in pertinent part as follows:

The second concern was the restructuring of the GI section during her [Konersman]

absence. This was not counseling but instructional information. The role of the assessment nurse in the hospital has changed from a nurse to a technician. This eliminates part of the duties that Elaine was used to doing. I reviewed this with her and asked her to assume call back activities for the ASU as well as help complete a quality improvement monitoring test for this unit. She asked a few questions, then seemed satisfied.

Thereafter, for the next several months, the preadmission assessments were performed by the Nursing Assistants. However, despite the fact that Ms. Konersman was not a party to the assessments, she was required to co-sign or certify such assessments. To the extent that she might have been troubled by any particular assessment, she had the option of forwarding the assessment to the ASU for the signature of another Registered Nurse.

Although Ms. Konersman was assigned some new duties, i.e. patient "call-backs" and a quality assurance project, to replace the preadmission assessments, she was concerned that allowing the Nursing Assistant to perform the assessments and requiring her to co-sign such patient assessments was placing her nursing license in jeopardy since the Operating Instructions did not provide for such a procedure. When she conveyed her concerns to Captain Henning, her "direct supervisor", she was informed that the Operating Instructions were in the process of being changed.

Around January 1993, for one reason or another, the number of patients arriving at the GI section of the ASU increased to such an extent that patients undergoing preadmission assessments were forced to wait hours for their scheduled appointments. As a result, Ms. Konersman was directed to help out the Nursing Assistants and again participate in the preadmission assessments. Ms. Konersman proceeded to perform the preadmission assessments herself and also continued to co-sign the assessments made by the Nursing Assistants. The record indicates that out of 32 preadmission assessments performed during the period January - March 1993, Ms. Konersman performed only 18 herself.

According to Ms. Konersman, she became uncomfortable about giving narcotics or other medicines to patients that she really knew nothing about since she had not personally performed their preadmission assessments and, in May 1993, complained to the Union steward about the matter.

Conclusions

The General Counsel takes the position that Respondent violated Sections 7116(a)(1) and (5) of the Statute by implementing changes in its GI Clinic, including reassigning preadmission patient assessment duties to Nursing Assistants and having Ms. Konersman co-sign or certify the preadmission assessments made by the

Nursing Assistants, without first giving notice to the Union and affording it the opportunity to bargain over the impact and manner of implementation of such changes.

Respondent on the other hand denies that it violated the Statute. According to Respondent, it was not obligated to bargain with the Union since "the facts do not support an argument that a change even occurred" with respect to Ms. Konersman performing preadmission patient assessments. In support of its position Respondent notes that after the November 1992 meeting Ms. Konersman continued to perform pre-admission patient assessments. Additionally, Respondent takes the position that it was under no duty to bargain with the Union about the reassignment of the preadmission patient assessments since the "right to assign work is statutorily retained by management". Although not clear from the record, it appears that in this latter connection, Respondent is contending that management is entitled to determine the percentage of time an employee spends on various duties falling within the employee's job description. Finally, Respondent takes the position that even if a change in a condition of employment occurred, it was under no obligation to bargain with the Union over the change because, at best, the impact on Ms. Konersman's working conditions was deminimis.

A reading of the General Counsel's post-hearing brief indicates that the General Counsel has attempted to broaden the scope of the Complaint to include the failure of Respondent to bargain over the assignment of the preadmission assessments to the Nursing Assistants. Inasmuch as the Complaint is limited to the changes imposed upon Ms. Konersman, the record is devoid of any probative evidence concerning whether Nursing Assistants had in the past performed preadmission assessments, the absence of any notice to Respondent of General Counsel's intention to make the assignment of preadmission assessments to the Nursing Assistants a part of the Complaint, my decision will be limited solely to whether there was a change in Ms. Konersman duties and if so, whether such change imposed a bargaining obligation upon Respondent which was not fulfilled.

Based primarily on the credited testimony of Ms. Konersman and the November 23, 1992 "Record of Counseling", I find that effective November 23, 1992 Ms. Konersman's daily nursing duties were changed to eliminate the preadmission patient assessments. I further find that henceforth such preadmission patient assessments were to be performed by the Nursing Assistant and that the Nursing Assistant's assessments were to be certified by a Registered Nurse.⁽⁴⁾ Ms. Konersman did retain the right to refuse to certify any particular assessment made by the Nursing Assistant and forward same to another Registered Nurse for signature. However, due to the fact that she had recently undergone counseling she was reluctant to do so. Additionally, Ms. Konersman was concerned that allowing a Nursing Assistant to perform the assessments put her professional license in jeopardy because the existing Operating Instructions did not provide for such delegation. Finally, Ms. Konersman, who was responsible for administering narcotics and other powerful medications based upon the information contained in the preadmission assessments, feared that there might well be an error in the assessments which could cause injury to the patients and jeopardize her license.

Based upon the above findings of fact, I conclude in agreement with the General Counsel and contrary to the contention of Respondent, that the change made with respect to the preadmission assessments had more than a de minimis impact on the working conditions of Ms. Konersman. Anytime a licensed employee is forced to either perform or delete a duty which could jeopardize her license there can be no doubt that such change has a substantial impact on the employee.⁽⁵⁾

Accordingly, I find that Respondent by changing Ms. Konersman's conditions of employment, i.e. imposing the requirement that she certify the preadmission assessments made by the Nursing Assistant, without first notifying the Union and affording it the opportunity to bargain over the impact and manner of implementation of such change, violated Sections 7116(a)(1) and (5) of the Statute. See, U.S. Government Printing Office, 13 FLRA 203; Department of Health and Human Services, Social Security Administration, 24 FLRA 403.

In view of the foregoing findings and conclusions, it is hereby recommended that the Authority issue the following Order designed to effectuate the purposes and policies of the Statute.⁽⁶⁾

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the Department of the Air Force, 56th Medical Group Hospital, MacDill Air Force Base, Florida, shall:

1. Cease and desist from:

(a) Imposing on the Registered Nurses including Ms. Elaine Konersman, the responsibility for certifying the preadmission assessments made by Nursing Assistants without first notifying the American Federation of Government Employees, Local 547, the exclusive representative of a unit of our employees, including Registered Nurses, working at the 56th Medical Group Hospital, MacDill Air Force Base, Florida, and affording it the opportunity to bargain concerning the procedures which management will observe in effecting such change and appropriate arrangements for employees, i.e Registered Nurses, affected by such change.

(b) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Relieve the Registered Nurses, including Ms. Elaine Konersman, of the responsibility for certifying the preadmission assessments made by the Nursing Assistants.

(b) Notify the American Federation of Government Employees, Local 547, prior to implementation, of any future changes in conditions of employment, including making Registered Nurses responsible for certifying the preadmission assessments made by the Nursing Assistants, and upon request, negotiate in good faith with the American Federation of Government Employees, Local 547 with respect to procedures which management will observe in effecting such changes and appropriate arrangements for employees adversely affected by such changes.

(c) Post at its facilities at the 56th Medical Group Hospital, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commanding Officer, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(d) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, September 13, 1994

BURTON S. STERNBURG

Administrative Law Judge

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT implement changes in working conditions of bargaining unit employees, by unilaterally imposing upon the Registered Nurses the responsibility for certifying the preadmission assessments made by the Nursing Assistants without giving notice to the American Federation of Government Employees, Local 547, the exclusive representative of certain of our employees, and affording it the opportunity to bargain concerning the impact and manner of implementation of the change.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL cease requiring the Registered Nurses, including Ms. Elaine Konersman, to certify the preadmission assessments made by the Nursing Assistants.

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WE WILL notify the American Federation of Government Employees, Local 547, the exclusive representative of our employees, of any intended changes in conditions of employment, including assigning to Registered Nurses the responsibility for certifying the preadmission assessments made by the Nursing Assistants, and, upon request, afford it the opportunity to bargain over those changes.

(Activity)

Date: _____ By: _____

(Signature)

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Atlanta Region, 1371 Peachtree Street, NE, Suite 122, Atlanta, GA 30309-3102, and whose telephone number is: (404) 347-2324.

1. A Nursing Assistant is a civilian employee within the bargaining unit. A Nursing Technician is an active duty position in the military. Throughout the record the Nursing Assistant is referred to at times as Nursing Technician since the Respondent uses the terms interchangeably.

2. According to the "Accreditation Manual For Hospitals", which is identified in the record as Respondent's Exhibit No. 2, an "assessment" is defined as:

The systemic collection and review of patient-specific data gathered from all appropriate and available sources. The assessment includes conducting appropriate physical observation and/or examination procedures and recording, reporting, and evaluating such data as necessary to establish each patient's nursing diagnosis(es) and/or patient problems or care needs. An admission assessment begins with the nurse's first encounter with the patient and continues through the formulation of the nursing diagnosis(es) and/or patient care needs or problems list.

3. According to Ms. Kathryn Jack, who had been employed at MacDill Air Force Base as a Registered Nurse for some twenty-eight years before leaving in 1982 to become Union President,

only Registered Nurses were authorized to perform preadmission patient assessments. While Nursing Assistants might have been allowed to perform tasks not involving professional judgments, such as taking temperatures, blood pressure readings and EKGs, etc., the Registered Nurse was required to actually assess the physical condition of the patient and ascertain the patient's medical background, etc.

With respect to the training given Mr. Watts in connection with preadmission patient assessments, Ms. Jack denied ever receiving any notice from Respondent that such training was being performed.

Ms. Jack's testimony in the above respect is supported by (1) Respondent's Operating Instructions, and (2) ASU admission criteria and procedures dated 1991 and 1992. The 1993 version of the admission criteria and procedures, which was published after the filing of the charge underlying the instant complaint, for the first time makes provision for Nursing Assistants to aid in the collection of the preadmission data.

4. The fact that at a later date, sometime after January 1993, due to the fact that more patients than expected commenced using the clinic, Respondent altered its original decision and reassigned Ms. Konersman to help out with the preadmission assessments does not change the fact that on November 23, 1992 a change was made in Ms. Konersman's conditions of employment.

5. In reaching this conclusion, I do mean to suggest that an employee has an unfettered right to perform all the duties set forth in his or her job description.

6. Applying the criteria set forth by the Authority in Federal Correctional Institution, 8 FLRA 604, i.e. whether and when notice was given the Union, the willfulness of the activity's conduct in failing to discharge its bargaining obligations imposed by the Statute, the nature and extent of the impact experienced by the adversely affected employees, and whether, and to what degree, a status quo ante remedy would disrupt or impair the efficiency and effectiveness of the activity's operations, I find that the status quo ante remedy urged by the General Counsel is not in order. This is particularly true since the 7116(a)(5) violation is not predicated on the reassignment of the preadmission assessments to the Nursing Assistants but rather on the imposition of the certification requirements upon the Registered Nurses. However, I will order that the Respondent cease and desist from having the Registered Nurses co-sign or certify the accuracy of the preadmission assessments made by the Nursing Assistants until such time as the Union has been accorded the opportunity to negotiate over the impact of such change.