

LABOR-MANAGEMENT RELATIONS

- 1. REASON FOR ISSUE:** To revise the Department of Veterans Affairs (VA) procedures regarding labor-management relations.
- 2. SUMMARY OF MAJOR CHANGES:** To delete reference in Part II of the handbook, "The VA Partnership Council's Guide to Collective Bargaining and Joint Resolution of 38 U.S.C. 7422 Issues." The Guide has been abolished and new procedures are described. Chiropractors are being added to the list of positions in Part II, paragraph 1, in accordance with Public Law 108-170, dated December 6, 2003, which amended Sections 7401(1) and 7421(b) of Title 38.
- 3. RESPONSIBLE OFFICE:** The Office of the Associate Deputy for Labor-Management Relations.
- 4. RELATED DIRECTIVE:** VA Directive 5023, Labor-Management Relations.
- 5. RESCISSIONS:** Refer to the Transmittal Sheet for VA Handbook 5001, General Introduction and Administration.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/Robert N. McFarland
Assistant Secretary for
Information and Technology

/s/William H. Campbell
Assistant Secretary for Management
Office of Human Resources and Administration

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PART II. LABOR-MANAGEMENT RELATIONS - TITLE 38

1. INTRODUCTION. This part applies to physicians, dentists, podiatrists, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries [and chiropractors (collectively referred to as “title 38 employees”)] represented by labor organizations holding exclusive recognition in the Department of Veterans Affairs (VA). This part establishes the procedures for handling negotiability and grievability questions when there is an assertion by management that the issue concerns or arises out of professional conduct or competence, peer review, or the establishment, determination, or adjustment of employee compensation.

2. REFERENCES

a. Section 202 of the Department of Veterans Affairs Health-Care Personnel Act of 1991, Public Law (Pub. L.) 102-40, codified at 38 U.S.C. § 7422.

b. [5 U.S.C., chapter 71].

c. [38 U.S.C., chapter 74].

3. POLICY

a. VA recognizes the right of title 38 employees, as established in 38 U.S.C. § 7422(a), to engage in collective bargaining with respect to conditions of employment through representatives chosen by them.

b. Collective bargaining shall be limited to the extent authorized in 38 U.S.C. § 7422(b). Working conditions of title 38 employees generally are subject to collective bargaining under 5 U.S.C., chapter 71. However, under 38 U.S.C. § 7422(b), such collective bargaining (and any grievance procedure provided under a collective bargaining agreement) in the case of title 38 employees may not cover, or have any applicability to, any matter or question concerning or arising out of professional conduct or competence, peer review, or the establishment, determination, or adjustment of employee compensation.

c. Title 38 employees are subject to part I of this handbook involving labor relations except for matters addressed in this part.

4. DELEGATION OF AUTHORITY. The Under Secretary for Health or designee, after consultation with appropriate officials in the Office of Labor-Management Relations and/or the Office of the General Counsel, as appropriate, will decide whether a matter or question concerns or arises out of professional conduct or competence, peer review, or the establishment, determination or adjustment of employee compensation.

5. PROCEDURES. [A facility director or other appropriate official may request a decision by the Under Secretary for Health that a matter or question involved in a pending grievance arbitration or proceeding before the Federal Labor Relations Authority (FLRA) or the Federal Service Impasses Panel (FSIP) concerns or arises out of professional conduct or competence, peer review, or the establishment, determination or adjustment of employee compensation within the meaning of 38 U.S.C. § 7422. The

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request must be signed by the facility director and submitted to the Under Secretary for Health through the Office of Labor-Management Relations. The facility director should advise the local union that the request has been submitted and invite the union to provide input on the issue to the Under Secretary for Health, through the Office of Labor-Management Relations, within ten working days. Once the Under Secretary for Health has determined that an issue is subject to one of the 38 U.S.C. § 7422 exemptions, that decision divests the FLRA, FSIP, and/or arbitrator of jurisdiction to resolve the matter. More extensive detailed guidance on preparing and submitting a package for an Under Secretary for Health determination that a matter or question concerns or arises out of professional competence or conduct, peer review or employee compensation may be found on the VACO [Labor Management Relations Office Web site.](#)]