



AFGE Congressional Testimony

STATEMENT OF

**AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
AND AFGE NATIONAL VA COUNCIL**

**BEFORE THE
SUBCOMMITTEE ON HEALTH
HOUSE COMMITTEE ON VETERANS' AFFAIRS**

LEGISLATIVE HEARING

SEPTEMBER 29, 2010

Mr. Chairman and Members of the Subcommittee:

The American Federation of Government Employees (AFGE) and the AFGE National VA Council (NVAC) appreciate the opportunity to submit a statement for the record on H.R. 5543.

AFGE and NVAC represent nearly 200,000 employees in the Department of Veterans Affairs (VA), more than two-thirds of whom are employees of VA's world class health care system. They are proud of the care they provide to veterans every day. They also take great pride in the Veterans Health Administration's (VHA) best practices and state-of-the-art health care information technology that was developed through the joint input of labor and management.

Sadly, in 2003, the highly effective joint labor-management agreement on bargaining rights of VA's Title 38 health care professionals was nullified. In its place, the VA implemented a new policy that deprives Title 38 clinicians of basic rights to grieve and negotiate over matters related to compensation, patient care and peer review.

Seven years and many, many wasted VA health care dollars later, it is urgent that this unfair treatment of VA's Title 38 clinicians cease and that the VA return to a bargaining rights policy that resolves labor-management disputes more efficiently. As a first step, AFGE and NVAC urge the Committee to approve H.R. 5543 to restore equal rights to bargain over compensation matters. This bill will restore Congressional intent in enacting Title 38 bargaining rights in 1991 and will also allow these clinicians to enforce their rights under important VA recruitment and retention laws over the past decade.

Under current VA policy, Title 38 clinicians -- including physicians, dentists, registered nurses (RN), physician assistants, chiropractors, optometrists and podiatrists -- face work environments plagued by arbitrary and unfair pay policies. Many of these clinicians bring to the VA invaluable experience as military personnel providing care on the battlefield. Yet, they are singled out for unfair treatment. They cannot challenge management pay policies that violate federal law or VA regulations simply because they are "pure Title 38 employees" appointed under Section 7401(1) of Title 38, instead of "Hybrid Title 38 employees" appointed under Section 7401(3) with full Title 5 bargaining rights.

As a result, a Title 38 RN has no recourse if she or he is denied overtime pay, while a Hybrid Title 38 licensed practical nurse can file a grievance over the same issue. Similarly, the union cannot negotiate over retention pay criteria for a Title 38 psychiatrist, but can negotiate over the implementation of similar pay policies for a Hybrid Title 38 psychologist.

If these Title 38 health care professionals decide to leave the VA to work at a another federal facility, such as a military hospital or a federal prison clinic, they will acquire full collective bargaining rights under Title 5.

Thus, the choice is clear: if the VA wants to be an employer of choice in today's health care market and compete effectively for health care professionals in short supply, it must provide equal compensation bargaining rights to its Title 38 clinicians.

H.R. 5543 offers a very modest change to Section 7422, the bargaining rights provision of Title 38. It simply clarifies that, like all federal employees, VA Title 38 clinicians can bargain over the implementation of pay laws and regulations, but that only Congress and the VA Secretary can set basic rates of pay.

The narrow scope of H.R. 5543 addresses opponents' assertions that employees will try to bargain over federal pay scales. The language of this bill limits bargaining to compensation issues *other than basic rates of pay* that Congress has specifically addressed in legislation to help the VA recruit and retain health care personnel such as RN locality pay and physician and dentist market pay and performance pay. H.R. 5543 would also protect Title 38 clinicians from violations of routine pay laws that all public and private sector registered nurses count on, such as the right to additional pay for working evenings and weekends.

AFGE and NVAC note that the VA has *never* offered this Committee an example of an employee's attempt to use bargaining rights to set federal pay rates, and that there is not a single Undersecretary of Health "7422" case involving such an attempt.

To address another concern raised by some opponents, the recommendations of the recent "7422 workgroup" that are pending before the Secretary are no substitute for legislative change. Yes, they have the potential to improve Title 38 labor-management relations to some extent and we appreciate the Secretary's willingness to review current policy. However, even if the recommendations are adopted, they cannot take the place of

legislation that clarifies the scope of the law. These recommendations very modest in scope, and would not provide Title 38 clinicians with equal bargaining rights. Also, they lack the force of law; Courts and arbitrators will continue to defer to the Secretary's discretion under Title 38 absent legislation. Finally, as we saw in 2003, policies issued during one administration can be easily tossed out by the next. If the VA is to effectively compete with other health care employers, it must assure current and prospective hires that they can count on fair treatment and the ability to enforce pay laws and regulations.

VA's current policy on compensation bargaining rights has weakened critical legislation that Congress passed in recent years to recruit and retain a strong health care workforce. For example, Congress enacted legislation in 2004 to use local panels of physicians to set market pay that would be competitive with local markets (P.L.108-445). The USH ruled that AFGE's national grievance over the composition of the pay panels was barred by the "compensation" exception. (Decision dated 3/2/07). Currently, VA physicians in numerous facilities are unable to challenge unfair performance pay criteria that penalize them for hospital-wide performance even though P.L. 108-445 specifically refers to "individual achievement".

Finally, how dangerous can this simple clarification in the law be? The VA has already agreed to full bargaining rights for new Title 38 clinicians at the new joint VA-Navy facility at North Chicago. Section 1703 of Public Law 111-84 provides that Navy civilian health care professionals who are transferring to the VA workforce after completion of this facility merger will retain full Title 5 collective bargaining rights for two years in matters related to compensation, as well as patient care and peer review. AFGE and NVAC look forward to working with the VA to implement this two year pilot project when it begins next month

Thank you for the opportunity to share the views of AFGE and NVAC on this important legislation for maintaining a strong VA health care workforce.