United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

DEPARTMENT OF DEFENSE
NATIONAL GUARD BUREAU
VIRGINIA NATIONAL GUARD
BLACKSTONE, VIRGINIA

and

SOUTHSIDE CHAPTER, ASSOCIATION OF CIVILIAN TECHNICIANS

Case Nos. 01 FSIP 89
and 01 FSIP 91

DECISION AND ORDER

The Department of Defense, National Guard Bureau, Virginia National Guard, Blackstone, Virginia (Employer) and Southside Chapter, Association of Civilian Technicians (Union) filed separate requests for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse involving identical issues under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119. The cases have been consolidated for administrative convenience.

Following an investigation of the requests for assistance, arising from negotiations over a successor collective bargaining agreement (CBA), the Panel determined that the dispute should be resolved on the basis of single written submissions from the parties. The parties were informed that after considering the entire record, the Panel would take whatever action it deemed appropriate to resolve the impasse, which may include the issuance of a Decision and Order. Written submissions were made pursuant to this procedure, and the Panel has now considered the entire record.

BACKGROUND

The mission of the Virginia National Guard is to fight in the nation's wars, and to respond to emergencies in the State of Virginia. The Union represents approximately 127 bargaining-unit employees in grades ranging from GS-5 to -9, WG-5 to -12, and WL-8

to -10. A few work in clerical positions, but most are employed in maintenance positions as mechanics, and tool and parts technicians. The parties' collective bargaining agreement was to have expired on February 7, 2000, but continues in effect pending implementation of a successor.

ISSUES AT IMPASSE

The parties essentially disagree over whether unit employees should: (1) receive two extra sets of uniforms, in addition to the uniforms that the Employer is already providing, and (2) be permitted to use duty time to order and exchange uniforms.

POSITIONS OF THE PARTIES

1. The Union's Position

The Union proposes that the Employer provide two additional uniforms per technician, and allow the use of duty time to exchange uniforms. This is intended to rectify the unfairness of the current policy under which dual-status technicians who wear uniforms 280 days per year receive the same number of uniforms as National Guard military personnel who wear uniforms about 29 days per year. In addition, technicians need extra uniforms because military regulations state that they may not wear torn, faded, or stained uniforms, despite the fact that they work with heavy machinery, fuels, and oils that easily tear and stain the uniforms. Even though management has a policy permitting an unlimited exchange of uniforms, "[d]epending on funding, availability, and workload of the supply sergeant and availability of the uniforms, replacements can take several months." As a result, technicians sometimes spend their own money to buy new uniforms to avoid violating the military policy against the wearing of worn, torn, or stained uniforms. Furthermore, at least four other state National Guard units realize that replacing uniforms expeditiously is a problem, and have reached agreement with their unions to allow technicians to receive additional uniforms. Finally, "[s]ince wear of the uniform is mandated by Statute while performing Technician duties, the time involved to replace those uniforms should also be accomplished in a duty status."

2. The Employer's Position

The Employer proposes to maintain the *status quo* under which employees do not receive extra uniforms, and employees are not

permitted to use duty time for travel to order or exchange uniforms. To address the Union's concern about delays in replacing uniforms, the Employer basically proposes to allow technicians to pick up replacement uniforms at their monthly drills, rather than waiting to have uniforms delivered to the employee's work site. At the outset, the Panel should "consider if it is appropriate to retain jurisdiction in this matter." By requiring that technicians be issued additional uniforms, the Union is essentially proposing that uniforms be provided under two separate statutory authorities, 37 U.S.C. §§ 417 and 418, 5 U.S.C. § 5901, and 10 U.S.C. § 1593. Provision of uniforms under more than one of these titles, however, is contrary to 37 U.S.C. § 418(c),[1/] which states that if a uniform allowance is paid under title 37, it may not be paid under titles 5 or 10. Therefore, the Employer considers the Union's proposal regarding the number of uniforms to be provided to technicians to be "contrary to 37 U.S.C. § 418(c)."

On the merits of the issues, the number of uniforms provided to technicians should not be increased because internal regulation "CTA 50-900 constitutes the only Department of the Army authorization document for individual and organizational clothing and equipment . . . procur[ed] with appropriated funds." In addition, "management believes that the current number of uniforms issued is sufficient to ensure that bargaining unit technicians have adequate uniforms available for both their technician duties and for wear during weekend drills." In this regard, the Employer has "an unlimited fair wear and tear exchange policy" which recognizes the increased amount of uniform wear a technician incurs. It also provides coveralls sufficient to protect the uniforms. The Employer "has not limited the frequency of that exchange . . . in spite of the knowledge that bargaining unit technicians are not wearing the protective coveralls provided." The wearing of the protective coveralls has not been mandated to address employees' complaints about comfort. Given the accommodations the Employer already has made with respect to this issue, it "does not believe it is reasonable . . . to provide additional uniforms to compensate for damage caused when an individual technician decides not to wear the protective coveralls provided."

1/ Section 417 concerns uniform allowances for officers, and § 418 concerns uniform allowances for enlisted members of the National Guard. This analysis is limited to a discussion of § 418, which is more applicable to bargaining-unit members.

Regarding the Union's allegations of delays in replacing uniforms, this should not be a problem if technicians replace them as needed, instead of waiting to replace several at once. Moreover, because technicians are permitted to request new uniforms during duty time by phone or fax, there is no need to permit them to order and exchange uniforms on duty time. The Union's approach also "could result in a considerable amount of lost work time since many technicians are assigned to military units that are not within close proximity to their work site." Finally, the Union has not shown any instances where employees were "negatively impacted" because of the Employer's current uniform policy and, therefore, has presented insufficient evidence to merit a change in the *status quo*.

CONCLUSIONS

Preliminarily, we turn to a consideration of the Employer's jurisdictional argument. In such circumstances, the Panel is guided by the Federal Labor Relations Authority's (FLRA) decisions in Commander, Carswell Air Force Base, Texas and American Federation of Government Employees, Local 1364, 31 FLRA 620 (1988) (Carswell) and U.S. Department of the Interior, Bureau of Reclamation, Lower Colorado Region, Yuma, Arizona and National Federation of Federal Employees, Local 1487, 41 FLRA 3 (1991) (Bureau of Reclamation), which establish the obligations and limitations relating to the Panel's authority to resolve impasses where duty-to-bargain issues are raised.[2/] In this regard, in National Federation of Federal Employees, Local 1669 and U.S. Department of Defense, Arkansas Air National Guard, 188th Fighter Wing, Fort Smith, Arkansas, 55 FLRA 63 (1999), the FLRA rejected an agency argument that 37 U.S.C. §§ 417 and 418 "'deal comprehensively' with the issue of uniforms and uniform allowances in a manner that makes bargaining inappropriate." In addition, 37 U.S.C. § 418 does not limit the number of uniforms that may be provided to technicians. Section 418(a), which concerns enlisted members, states:

2/ Carswell allows the Panel to resolve duty-to-bargain issues raised in impasse proceedings where the FLRA previously has found a "substantively identical" proposal negotiable; Bureau of Reclamation allows such resolution even where an employer's negotiability arguments are different from those previously addressed by the FLRA.

> The President may prescribe the quantity and kind of clothing to be furnished annually to an enlisted member of the armed forces or the National Guard, and may prescribe the amount of cash allowance to be paid to such a member if clothing is not so furnished to him.

Contrary to the Employer's contention, because title 37 does not limit the number of uniforms available to technicians, there is no need to invoke titles 5 and 10. Accordingly, we conclude that there is no legal impediment to retaining jurisdiction over this aspect of the parties' impasse.[3/]

After carefully reviewing the record concerning the merits of the dispute, we are persuaded that a compromise solution would provide a better resolution than what has been proposed by either party. Under the compromise, technicians shall receive two additional uniforms, and be permitted to use duty time to fax or phone in orders for replacement uniforms. Our approach also provides that technicians may pick up replacement uniforms at their monthly drills. In our view, the Union has demonstrated a need for deviating from the policy that applies to military personnel of the National Guard because of the duties civilian technicians perform, and the frequency of their performance.[4/] At least four other states seem to have recognized this by adopting similar proposals. Moreover, providing two more uniforms should not result in additional costs to the Employer, since the Employer has an unlimited replacement policy. Furthermore, the Employer concedes that technicians' work is likely to result in additional wear and tear of uniforms, and that coveralls provided to technicians fail

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3/ To the extent that the Employer's position may be construed as an assertion that the Union's proposal conflicts with an agency regulation, the Employer has not alleged that there is a compelling need for the regulation in question so as to render the proposal nonnegotiable. On the other hand, to the extent that it is asserting that the current regulation does not authorize the issuance of additional uniforms, while this may be true, the Panel's statutory authority to "take whatever action is necessary" to resolve impasses supercedes such limitations.

4/ The Employer has asserted that the Union underestimated the number of days that military personnel wear the uniform. Nevertheless, the parties agree that technicians wear their uniforms far more than do military personnel.

to prevent such wear and tear, because technicians find it uncomfortable to work in them.

As for using duty time to exchange uniforms, the Union has not contested the Employer's assertion that some technicians work substantial distances from the supply sergeant, and that a considerable loss in the amount of work time would result. Therefore, the compromise wording codifies the Employer's current practice under which technicians may use duty time to fax or phone in requests for replacement uniforms. Finally, the wording in our order also adopts the Employer's proposal to allow technicians to exchange uniforms at their monthly drills. We believe that this is a reasonable way of addressing any delays that technicians may have experienced under the Employer's current uniform exchange program.

ORDER

Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. § 2471.6(a)(2), the Federal Service Impasses Panel, under 5 C.F.R. § 2471.11(a) of its regulations, hereby orders the following:

The parties shall adopt the following wording:

In addition to uniforms issued to technicians in their military capacity, for each technician required to wear the military uniform, the Employer agrees to provide two additional complete sets (blouse, pants, undershirt) of Battle Dress Uniform (BDU) or two complete sets (shirts, pants or skirts, undershirts or blazers) of Class A or B uniforms as applicable to the technician's duties. The Employer agrees to provide shoes or boots as appropriate. Safety footwear and additional safety items will be issued IAW Article 16 of this agreement. The Employer also agrees to provide other required uniform items and accessories to be worn with the military uniform (hats, belts, etc.). Thereafter uniform and uniform items will be replaced on a fair wear and tear basis. **Individual technicians will order replacement uniforms through their supply unit sergeant by the first drill weekend following the date that the uniform becomes unserviceable. Technicians will also be allowed duty time to phone or fax in**

their orders for replacement uniforms. Replacement of uniforms or uniform items on a fair wear and tear basis will be accomplished as soon as possible but **usually not later than the next drill weekend following placement of the order. If a technician does not receive replacement uniforms in a timely manner, he/she should raise the issue to his/her first line supervisor who should attempt to resolve any problems as soon as possible. Additionally, each technician has the responsibility for notifying the chain of command for their unit of assignment of any delays.**[5/]

By direction of the Panel.

Ellen J. Kolansky
Acting Executive Director

June 25, 2001
Washington, D.C.

5/ Only the bolded wording was in dispute.