

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

PENTAGON FORCE PROTECTION
AGENCY

And

FRATERNAL ORDER OF POLICE
PENTAGON LABOR COMMITTEE

Case No. 17 FSIP 088

DECISION AND ORDER

The Pentagon Force Protection Agency (Agency or Management) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. §7119, between it and the Fraternal Order of Police, Pentagon Labor Committee (Union).

Following an investigation of the Agency's request for assistance, which involves the establishment of a mandatory physical agility test (PAT), the Panel asserted jurisdiction over this dispute and decided to resolve it through a Written Submissions procedure with the opportunity for rebuttal statements. The parties were informed that, after considering the entire record, the Panel would take whatever action it deemed appropriate to resolve the dispute, which could include the issuance of a binding decision. The Panel has now considered the entire record, including the parties' final offers, written submissions, and the parties' rebuttal statements.

BACKGROUND

The Agency is a civilian defense agency within the Department of Defense (DoD) charged with protecting and safeguarding the occupants, visitors, and infrastructure of the Pentagon and other delegated Pentagon facilities. The Fraternal Order of Police, Pentagon Labor Committee (Union) represents

around 700 Officers, mostly at the main Pentagon facility in Washington, D.C. There are no other positions in the unit. The parties are governed by a collective bargaining agreement that expires in June 2018.

In 2012, the DoD issued a regulation - DoD Instruction 5525.15 (DoD Instruction) - that required all DoD facilities to establish physical fitness standards for any civilian Officer employed by those facilities. Prior to this DoD Instruction, the Agency's physical fitness standards for its Officers were optional. Although Officers would take a yearly PAT there were no repercussions should an Officer fail that test. After some informal discussion, in 2014, the Agency sought to formally negotiate with the Union over the establishment of a mandatory PAT Regulation for all Officers. The parties engaged in lengthy negotiations.

Unable to make progress in negotiations, the parties received mediation assistance from a Federal Mediation and Conciliation Services mediator (the Mediator) in Case No. 201711750033 for 4 days between April and May of 2017. On the fourth day, the Agency ended mediation after concluding that progress had stalled. Shortly thereafter, the Mediator contacted the parties to inquire about the status of the case and indicated she believed more mediation efforts would be "fruitful." Although the Union expressed an interest in resuming mediation, the Agency did not and informed all parties that it intended to seek assistance from the Panel. It did so. Thereafter, on July 27, 2017, the Mediator stated that she believed that the parties had issues they could not "work past" and, as such, "a Panel decision" was likely necessary to resolve their dispute.

ISSUES

The parties' dispute centers around four key areas of disagreement in the proposed PAT Regulation: (1) application and administration of the PAT; (2) a transition-period memorandum of understanding (transition MOU); (3) issues related to the establishment of a fitness improvement program (FIP) for Officers who fail a PAT; and (4) the establishment of a fitness maintenance program (FMP).

I. Application and Administration of the PAT

There are two key issues: (1) scope of coverage; and (2) administration of the PAT.

a. Scope of Coverage

1. Union Position

The most significant point of contention in this dispute is the scope of coverage of the PAT. The **Union** offers a definition for "covered employees" which states that only Officers who were hired by the Agency after January 1, 2016, would be "covered" by the Regulation. Therefore, all other Officers would be excused from adhering to the PAT Regulation. Under this definition, nearly every Officer in the bargaining unit would be excluded from the requirements of the Regulation. The Union offers two primary arguments in support of its proposal.

The Union's first contention is that there is no "business necessity" behind the establishment of an annual PAT, which would require all Officers to perform 19 push-ups in 2 minutes and to complete a 1.5 mile run in 17.5 minutes. In support, the Union cites a 2011-study created by a private contractor hired by the Agency to examine the Officers' duties. The Union claims that the contractor's description of those duties did not reference any duties involving "upper body strength." Moreover, this contractor also determined that Officers who were required to run on duty only ran "5-100 yards" most of the time. In 2013, a second contractor reviewed the Officers' duties with the goal of assisting the Agency in developing an appropriate physical fitness evaluation. The 2013-contractor described employee duties as "sedentary with major exceptions," with those exceptions including "dealing with violent protestors or terrorists." As a result, the 2013-contractor prepared a proposed PAT that focused more on evaluating the performance of physical activities that would arise in the aforementioned situations, e.g., climbing stairs, crawling, subduing suspects. This suggested PAT did not evaluate employees on the basis of performing push-ups or a timed run. Finally, the Union maintains that adopting a mandatory annual PAT could hamper the Agency's mission and harm the taxpayer. Should a significant number of Officers be placed on restricted duty, or be removed from service altogether, the Agency would have to scramble to find replacement Officers. The foregoing means that the Agency could then have problems with fulfilling its mission and goals.

The Union's second basis for objecting to the establishment of a mandatory annual PAT is that the test is inconsistent with equal employment opportunity (EEO) principles. Examining data from a 2015 PAT pilot, the Union noted that 35% of female

Officers who participated failed the test. Female employees made up 10% of the bargaining unit. By contrast, only 16% of male Officers did not pass. 2016 pilot data showed similar results. In this regard, 27% of female participants failed whereas only 13% of male employees failed. Additionally, of the 74 employees who failed the 2016-PAT, 67 were aged 40 or older. In the Union's view, all of the foregoing data establishes that the PAT has a disparate impact on the basis of gender and age.

Similarly, it is the Union's view that the Agency's proposal fails to provide any reasonable accommodations for disabled employees. Management's proposed regulation fails to "articulate that reasonable accommodations may be available" and also does not "describe potentially appropriate reasonable accommodations." Thus, the Union argues that the Agency's proposal is discriminatory towards disabled employees. Accordingly, it proposes removing language in the PAT regulation which states that the Regulation is "age and gender neutral" and "based on validated occupational tasks."

2. Agency Position¹

The **Agency** is unwilling to accept the Union's definition of "covered employees" because it exempts virtually all bargaining-unit employees from the DoD Instruction and the PAT Regulation. Thus, Management defines "covered employee" as "current [Agency] employees occupying a [Agency] covered position." The DoD Instruction makes the PAT a condition of employment for all Officers. These employees must accept personal responsibility for ensuring that they satisfy all job prerequisites. Moreover, the Agency has already provided "generous concessions" elsewhere in the Regulation.

The Agency also includes language stating that the PAT "is age and gender neutral and is based on validated occupational tasks" of the relevant positions. Moreover, its proposal states that a "covered employee's failure to meet the [PAT] means that he/she is not qualified for his/her position of record unless a waiver or reasonable accommodation is indicated" in accordance with 5 C.F.R. §§ 339.193² and 339.204. Management maintains that

¹ The Agency's relevant proposed language is set forth in Appendix I.

² There is no 5 C.F.R. §339.193. The language may be referring to 5 C.F.R. §339.103 which requires the administration of medical examinations to be compliant with the Americans with Disabilities Act and the Rehabilitation

the PAT is not discriminatory because it conforms to the Rehabilitation Act, the Civil Service Reform Act of 1978, and relevant Office of Personnel Management Regulations. The test does not "screen out, or tend to screen out, individuals with a disability, or a class of individuals with disabilities."

CONCLUSION

The requirement for an annual PAT flows from the DoD Instruction issued in 2012 that mandates an annual physical fitness test for all civilian security personnel employed by the DoD. The Union does not dispute its applicability but it nevertheless seeks an exemption from this framework for the reasons that are set forth above. Upon analysis, these reasons do not withstand scrutiny and, accordingly, we will adopt the Agency's language with a slight modification discussed below.

The Union maintains that two independent contractors have called into doubt the necessity of Management's chosen PAT. Yet both of the contractors also determined that there was *some* level of physical activity associated with the duties of these Officers. Indeed, the 2013 independent study provided a suggested physical test for adoption (albeit one that differs from Management's preferred approach). The foregoing establishes that there is indeed a physical component to the employees' job and it is appropriate to test that component. By contrast, the Union's proposal seeks to exempt virtually the entire bargaining unit from any testing of the employees' proficiency for this aspect of their duties. The Panel will not adopt such a drastic approach. In addition to what has already been discussed, the Union is essentially asking the Panel to substitute its judgment for that of Management's. Given that Management officials are in a better position to evaluate the day-to-day duties and conditions of employment, and entrusted with fulfilling the mission of the Agency through its management practices, we do not think it to be wise or appropriate to tinker with methods that the Agency has concluded best helps them to ascertain an employee's physical efficiency and effectiveness in the field. Thus, we will mostly impose the Agency's language set forth in Appendix I.

Although we order the adoption of the Agency's language, we make two slight modifications. As discussed above, the parties have raised issues concerning EEO matters. At its heart, the parties' dispute over EEO principles is one that is based on

Act. 5 C.F.R. §339.204 describes when an Agency can waive a medical standard or physical requirement for a job.

their respective competing interpretations of relevant EEO law. Applying this law, the parties reach different conclusions concerning the legality of a mandatory PAT requirement. Further still, they ask the Panel to enshrine those competing conclusions into the PAT Regulation. We will decline this invitation. The Panel does not have the authority to issue legal conclusions and, as such, it would be inappropriate to agree with either party.³ Accordingly, we impose the language below for Sections 3.f and g, which will preserve the parties' legal rights should they chose to pursue further legal action in the appropriate forums:

The age and gender neutrality of the PAT is determined by applicable law; and

A covered employee's failure to meet [the Agency's] Physical Fitness Standard means that he/she is not qualified for his/her position of record unless a waiver or reasonable accommodation in accordance with applicable law is indicated.

b. Administration of the PAT

1. Union's Position

There are four **Union** proposals concerning the administration of the PAT. First, the Union proposes that the PAT shall be administered only once in a calendar year. Specifically, 350 calendar days must pass before Management can schedule a subsequent PAT. The Union did not provide a specific argument in support of this proposal.

The second proposal states that, ordinarily, a PAT will not be administered by an individual in the same bargaining unit as an employee taking a PAT. This is language lifted directly from a PAT MOU that Management signed with a different Union that represents employees at the Agency's Raven Rock Mountain Complex

³ In its rebuttal statement, the Union argued that the PAT does not comply with 5 C.F.R. §339.203 which discusses when an Agency may establish a "physical requirement" for a job. The Union maintains that the PAT does not meet this standard. This argument is another legal dispute that the Panel lacks the authority to resolve.

(Raven Rock).⁴ The goal of this proposal is to limit the possibility that a bargaining-unit employee would be placed in a position where they would have to initiate an employment-based action that could harm a different employee's career.

The third proposal concerns the definition of "Primary PAT." The Union defines it solely as a "physical fitness test given to covered employees to measure their physical fitness level." By contrast, the Agency's proposal defines this phrase as a "physical fitness test given to covered employees to measure their physical fitness level and preparedness to safely and effectively accomplish the essential functions of the PFPA covered position he/she occupies." The Union did not explain why it prefers its language to that of the Agency's.

Finally, the Union proposes that supervisors should be "encouraged to use existing awards programs to recognize employees who excel at the PAT." The Union did not provide specific supporting argument.

2. Agency's Position

The Agency's proposed language states, in relevant part, that covered employees are required to "pass the PAT on a regular and recurring basis as a condition of employment." Management must have the flexibility to administer the test as often as possible. Management also does not accept the Union's language concerning restricting the individuals who will administer the test. The PAT will actually be administered by individuals who are not bargaining-unit employees. Thus, the Union's language is unnecessary. Management also prefers its definition of "Primary PAT" because it believes its proposal "speaks to the sole purpose of the PAT." Finally, the Agency disagrees with the Union's language referencing its award policy within the context of PAT's. Management's awards program is addressed in other existing Agency guidance and, as such, it is unnecessary to delve into this topic in the PAT Regulation.

CONCLUSION

⁴ Rather than apply the PAT Regulation, the Agency successfully negotiated a separate MOU to cover the entire PAT process with its Union that represents its employees at the Raven Rock facility. This MOU was entered into on July 20, 2017.

We will decline adoption of the Union's proposals. The Union's first proposal hampers Management from testing employees when it could be necessary to do so. Moreover, the Union has not demonstrated why the PAT should be limited to administration once a year. As to the second proposal, the Union does not dispute the Agency's statement that the PAT will be administered by non-bargaining-unit employees. Accordingly, the Union's language is unnecessary. The Union has also not demonstrated why its definition of "Primary PAT" is necessary. As such, we decline adopting it. Finally, we believe it is unnecessary to adopt the Union's awards language. The Union does not disagree with the Agency's assertion that existing guidance already touches upon the topic of awards, nor did it explain why this guidance is insufficient within the context of administering PAT's.

II. Transition MOU

1. Union's Position

The Union proposes adoption of an MOU that is intended to ease Officers into the requirements of the PAT regulation. It will be in place for a period of 1 year and goes into effect on the same day that the PAT regulation becomes effective. The MOU will be separate from the regulation. Although there are several components to the MOU, there are two key proposals embodied within the MOU.

The first proposal requires Management to administer a one-time "non-punitive" PAT assessment test to gauge an Officer's physical fitness levels. If an Officer cannot satisfy this test, he or she will be given an opportunity to meet with Agency fitness personnel to discuss possible fitness plans. This pre-PAT test is important because mandatory satisfaction of the PAT is an entirely new requirement and, as such, Officers do not know whether they have the skills to pass that test. The proposal will help employees gauge their ability to successfully navigate a PAT.

The second key proposal focuses on an Officer's duty status upon failure of a PAT. Under the PAT Regulation, the parties agree that employees who fail this test are placed on limited duty status while they engage in a 8-week Fitness Improvement Program (FIP) on duty time. They would also get 1-3 hour per week of duty time to engage in physical fitness activities at the Agency's fitness facilities. However, they may have to swap schedules in order to work during hours where the Agency's

facilities are open and available. This swap could cause some Officers to forego premium pay shifts, particularly night shift differential pay as authorized by Office of Personnel Management regulations. Under the Union's proposal, during the 1-year transition phase, Officers who are on a FIP will not be placed in a limited duty status (although they will be prohibited from performing certain duties). Additionally, the FIP period will be 12 weeks and could be extended by an additional 4 weeks. However, duty time for fitness is limited to 1 hour per week during this 16-week window. Again, the Union's proposal addresses the fact that Officers will now be expected to perform new mandatory tests that could result in a temporary reduction in pay. The Union's proposal will offset the foregoing by easing employees into this new scenario without suffering a reduction in pay for a period of 1 year.

2. Agency's Position

The **Agency** offered a proposed transition MOU that addressed the majority of as the Union's proposal for most of the parties' negotiations and the Panel's investigation of this dispute. However, in its written submission to the Panel, dated January 8, 2018, the Agency rescinded that proposal. It maintains that it offered an MOU on this topic as part of negotiations but the parties were "unsuccessful at reaching agreement." Thus, Management now seeks "to simply bring [the Agency] in line with DoD-wide requirements." Additionally, "Management feels there are already significant concessions built into the [PAT] regulation and nothing more is possible for reasons of mission, staffing, budget, etc."

CONCLUSION

We will not accept the Union's proposal, but we also do not accept Management's position. Throughout a portion of the parties' negotiations, Management offered a transition MOU that largely mirrored the Union's proposal as part of its final offer with little controversy. Indeed, it appeared that the only significant disputed issue in this MOU was whether to administer a one-time pre-PAT test. The Agency now walks back the foregoing citing broken down bargaining efforts and "mission, staffing, and budget" concerns.

As to the first reason, Management offers no explanation for why it waited until nearly the final hour to withdraw its transition-MOU proposal as part of its January 8, 2018, argument to the Panel. Nearly 8 months elapsed between the end of FMCS

mediation in May 2017 - when negotiations broke down - and the submission of this new position. Moreover, on September 12, 2017, during the Panel's investigation of the Agency's request for assistance, Management submitted via email the "PFFPA['s] final proposed *drafts*" of its "best and final" offer to the Panel and the Union. (emphasis added). This offer contained its proposed versions of the PAT Regulation and the transition MOU.⁵ It is not clear what changed since the end of mediation or September 12 to warrant Management's deviation. As such, we do not give credence to the idea that the proposal should be rejected because of bargaining history.

With regard to Management's second cited rationale, although Management argues that adopting a transition MOU will hamper "mission, staffing, and budget," it offers no argument or empirical data in support of this broad assertion. Indeed, it does not offer any specifics. Thus, it is difficult to say that this argument should also fully block implementation of the relevant MOU.

While we do not fully accept the Agency's arguments, we recognize that something other than complete and unaltered implementation of the PAT Regulation could strain Management's resources. Accordingly, we will order the adoption of the MOU that Management submitted in its September 12 Panel submission with a modification. Specifically, although the submission suggests a 1-year transition period, we will impose a 6-month period effective from the date of this Decision and Order. This period will permit a prompt transition into the full implementation of the PAT regulation but also provide the Officers impacted by the regulation with 6 months to transition to the new regulation. Further, Management's previous proposal does not require the one-time pre-PAT assessment requested by the Union.

III. Issues Concerning a Fitness Improvement Program (FIP)

1. Union's Position

The parties agree that if a covered Officer fails a PAT they will get an opportunity to take a PAT appeal. If they fail the appeal, they would then be placed in an 8-week FIP wherein they would get 1.5-3 of non-duty hours per week to improve their physical fitness levels at the Agency's facilities. Moreover, a Management official may authorize additional duty time for

⁵ The submitted transition MOU is attached in Appendix II.

fitness activities during the work week. If an Officer is placed within a FIP, they would also be placed on a limited duty status. The Union requests three additional items. First, when an Officer is placed in a limited status, the Agency must "make efforts to keep an employee on their same work shift." In the event this is not possible, however, the Agency would be responsible for paying any "shift differential." Second, if an Officer passes the PAT while in the FIP, the Agency must take steps to return that employee to their routine shift "right away" and Management's failure to do so will not result in "any loss of pay" for an Officer. Third, if an Officer in a FIP does not receive "sufficient fitness services," the 8-week FIP period will be extended. The goal of the first two proposals is to "minimize the impact on employees who are unable to successfully complete the PAT while they are participating" in the FIP. The third proposal is meant to "minimize the negative impact" of the Agency's failure to provide sufficient services.

2. Agency's Position

The Agency is unwilling to include the Union's proposed language in the PAT Regulation. An employee's pay is determined by "law and Federal regulation" (although it does not specify which laws and regulations). As such, the Agency has no ability to compensate employees as the Union wishes. Management is also opposed to the idea of extending the FIP period. The provided for period provides ample opportunity for improvement. It is up to each individual employee to take advantage of that period.

CONCLUSION

We will not impose the Union's proposed language which is set forth in the sections of the PAT Regulation labeled "Failing the PAT Appeal" and "Fitness Improvement Program (FIP)." The relevant language is focused on ensuring that, on a permanent basis, Officers who are placed on a FIP will not suffer any potential reductions in pay. However, we have imposed a transitory memorandum that will minimize disruption in pay for Officers who are on a FIP during that transition period. As discussed above, it was suggested to be adopted in order to ease employees into their new working conditions while also limiting the burdens to Management. However, that memorandum becomes superfluous if the temporary conditions under that MOU become permanent. To expect the Agency to permanently ensure consistent payment of Officers would burden Management greater than doing so solely for the period of 6 months. Moreover, it is not clear how employees could receive night pay if they do

not actually work night shifts. Accordingly, the Union's language shall be rejected. Instead, we will adopt the Agency's proposed language in the section for "Failing the PAT Appeal."⁶

IV. Fitness Maintenance Program

1. Union's Position

The **Union** proposes that, as part of the PAT Regulation, the Agency agree to establish a FMP for all "covered" Officers.⁷ Under this program, all such Officers would receive 6 hours of duty time per pay period to engage in "physical fitness activities" using the Pentagon's exercise facilities or grounds. Additionally, these employees would also receive duty time to travel and to take care of their hygiene following these sessions. Management can deny fitness time in the event of "legitimate work reason[s]," but it must schedule make-up fitness time. Finally, if in a 4 month period, an Officer does not receive the guaranteed amount of physical fitness time for that period, he or she will be excused from taking the PAT until they receive that time. It is only fair that Officers receive duty time to work out given that the PAT is a duty requirement. Additionally, Officers do receive duty time for firearm training, so the Union's proposal is not entirely without precedent.

2. Agency's Position

The **Agency** rejects the Union's proposal in its entirety. The Union's proposal would be "unduly burdensome on The Agency for reasons of mission, manpower, staffing and budgetary considerations." Moreover, it is up to Officers to take responsibility for their own personal fitness.

CONCLUSIONS

We will decline adopting the Union's proposal. The Union argues that employees should receive guaranteed duty time to

⁶ This language states "PFPA will assign an employee placed in limited conditional duty status in assignment serving the best interest(s) of the Agency and may require a change in the employees normally assigned shift, potentially affecting premium pay entitlement."

⁷ The Union's proposed language for its FMP is set forth in Appendix III of this IIR.

engage in physical fitness because Management has established a new condition of employment for these Officers. However, the Union has not demonstrated why Officers are unable to accomplish fitness goals without new supplemental compensation. Moreover, the Union offered no proof or evidence of comparable arrangements that exist elsewhere in the Federal sector. Although the Union notes that Officers do receive time for firearm training, it did not suggest that there is a specific amount of time allotted to each Officer as is required by the Union's proposal. Additionally, the Union is essentially, and permanently, requesting 4,200 hours of duty time per pay period (6 hours times 700 employees) for fitness activities. This will certainly strain Agency resources.

Moreover, the parties' agreed upon language for the PAT Regulation does provide employees with some benefits. In this regard, should an Officer fail the PAT, the Officer is placed in a FIP and does receive some duty time to engage in fitness activities. Further, we have imposed a modified transition MOU. As such, Officers will have had 6 months to adjust to their new reality which, in turn, could minimize the need for additional duty time for physical fitness activities in the future.

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 § 2471.11(a) of its regulations hereby orders the adoption of the following:

I. Administration and Application of the PAT

a. Scope of Coverage

Adopt Management's proposal in Appendix I with the following modification for Sections 3.f and g:

The age and gender neutrality of the PAT is determined by applicable law; and

A covered employee's failure to meet [the Agency's] Physical Fitness Standard means that he/she is not qualified for his/her position of record unless a

waiver or reasonable accommodation in accordance with applicable law is indicated.

b. Administration of the PAT

The Union's proposals shall be withdrawn.

II. Transition MOU

The language in Appendix II shall be adopted but the phrase "one year from the date this Agreement is fully executed" shall be modified to state "six months from the date of the issuance of the Panel's Decision and Order in 17 FSIP 088."

III. Fitness Improvement Program

Management's language shall be adopted and the Union's language shall be withdrawn.

IV. Fitness Maintenance Program

The Union shall withdraw its proposal.

By direction of the Panel.



Mark A. Carter
FSIP Chairman

February 7, 2018
Washington, D.C.

APPENDIX I-Agency's Relevant Disputed Language on Application
and Administration of the PAT

3. Policy

f. The PAT is age and gender neutral and is based on validated occupational tasks of the positions identified in paragraph 2 above (hereinafter referred to as "PFPA covered positions").

g. A covered employee's failure to meet PFPA's Physical Fitness Standards means that he/she is not qualified for his/her position of record unless a waiver or reasonable accommodation is indicated, as described in Subparts 339.193 and 339.204 of Reference(a).

APPLICABILITY. This regulation applies to all PFPA personnel occupying a position in the United States Office of Personnel Management (OPM) jobs series 0083, 1811, or one of the designated 1801 series employees (all hereinafter "referred to as "Covered Employees").

POLICY

A. PFPA expects covered employees to be able to perform a wide range of complex and physically demanding duties (sometimes requiring maximum physical exertion and/or lifesaving maneuvers) without hesitation under unpredictable and variable conditions consistent with their position description and job duties.

B. meet a minimum level of aerobic endurance and muscular strength in order to safely, efficiently, and reliably perform their essential duties ("hereinafter referred to as" PFPA'S Physical Fitness Standards").

C. PFPA will utilize the appropriate Department of Defense (DoD) policy or instruction to administer program to determine whether PFPA covered employees meet DoD Physical Fitness Standards.

D. PFPA requires Covered Employees pass the PAT on regular and recurring basis as a condition of continued employment.

E. A Covered Employee's failure to meet PFPA's Physical Fitness Standards (PFS) may be grounds for appropriate administrative action, up to and including removal as described in Administrative Instruction 8, reference (f), unless a waiver for reasonable accommodation is indicated, as described in Subpart 339.204 of Reference (a).

F. PFPA will not cover employee who fails the Primary PAT or PAT Appeal for promotion, to a position that requires employees to complete the primary PAT or PAT Appeal, until they have a current successful PAT result.

. . .

PART II: DEFINITIONS

covered employees: Current PFPA employee occupying a PFPA covered position.

. . .

Primary PAT: A physical fitness test given to covered employees to measure their physical fitness levels and preparedness to safely and effectively accomplish the essential functions of the PFPA covered position he/she occupies.

APPENDIX II-Agency's Transition MOU Proposal Submitted on
September 12, 2107

SUBJECT: Physical Ability Test- Transition Phase

This is a Memorandum of Agreement (MOA) between the Pentagon Force Protection Agency (PFPA), hereby referred to as the Agency, and the Fraternal Order of Police (FOP), D.C. Lodge No. 1, hereby referred to as the Union. When referred to collectively, PFPA and FOP are referred to as the "Parties."

Reference: "The New Physical Ability Test (PAT)," Memorandum of Understanding between PFPA and the Fraternal Order of Police, dated 15 Aug 2014

This agreement supersedes the previous agreement between PFPA and the FOP; "The New Physical Ability Test (PAT)," dated 15 Aug 2014.

This transition phase is defined as a period of one year from the date this Agreement is fully executed.

The portion of PFPA Regulation XXXX that requires covered employees to be placed in a limited conditional duty status following failure of the PAT Appeal will be held in abeyance until the expiration of this transition phase.

During this phase, covered employees are expected to continue to maintain and/or improve their current physical fitness level in preparation for full implementation of the PAT.

The objectives of this phase are to afford all covered employees an opportunity to successfully pass the Primary or Appeal PAT, and for those who fail to meet standards, to participate in the Fitness Improvement Program (FIP) in order to improve their health and fitness.

During this phase, covered employees may remain in a full duty status while enrolled in the FIP; however, they will be subject to certain duty limitations.

Duty limitations may include (but are not limited to): no deployments in support of High Risk Personnel, no specialized duties which earn specialty pay or assignment to mobile patrol operations.

Staffing and duty requirements permitting, covered employees enrolled in the FIP will be afforded a minimum of one sixty minute session per week with PFPA's fitness instructors, or participate in Fitness Improvement Program evaluation and conditioning exercises.

Covered employees may participate in the FIP for up to twelve weeks.

Covered employees participating in the FIP may re-take the PAT at any time. If they fail, they remain in the FIP as described herein. If the covered employee passes the PAT, he/she immediately returns to full duty status.

Subject to the Supervisory Fitness Instructor's approval, covered employees showing marked improvement in the FIP but not yet meeting standards may be extended in the FIP for up to four additional weeks.

Covered employees may also request to attend Fit-to-Win program services offered at the DiLorenzo Tricare Health Clinic.

Duty hours for covered employees may be temporarily changed to accommodate participation in FIP activities.

Fitness Maintenance Program

(1) Covered employees will be granted excused absences to participate in physical fitness activities at the Pentagon Athletic Center ("PAC"). Physical fitness activities suitable for excused absences will address cardiovascular/aerobic endurance, muscular strength/endurance, flexibility, and/or body composition, and will prepare covered employees to meet the PFPA's physical fitness standards.

(a) Employees who wish to engage in physical fitness activities in locations other than the PAC (i.e., run/walk outside) shall request permission from their supervisor. Such permission shall be freely given.

(b) To the maximum extent possible, full-time covered employees in the Union's bargaining unit will be excused with no charge to leave for up to six hours (recommend 1 hour minimum to 1½ hour maximum per session) per pay period to engage in physical fitness activities.

1 The Agency will schedule covered employees time to engage in physical fitness activities for up to six hours in a pay period unless the Agency can show that a legitimate work reason existed which necessitated scheduling fewer hours of physical fitness activities.

2 If a covered employee is not able to spend six hours in a pay period performing physical fitness activities due to Agency-mandated legitimate work reasons, the Agency will take steps to permit the covered employee to engage in additional physical fitness activities as soon as is practicable.

3 While the Agency may make the ultimate determination as far as the minimum and maximum per session dependent upon Agency manpower needs, absent exigent circumstances, each employee shall be offered six hours of excused absence to engage in physical fitness activities per pay period.

(c) Additionally, each covered employee who engages in physical fitness activities shall also be excused with no charge to leave for an adequate amount of time to travel to and from their assigned work site to the PAC or other approved physical fitness activity location, and for personal hygiene.

(2) Covered employees in the Union's bargaining unit who are not offered up to six hours per pay period to engage in physical fitness activities shall be exempt from completing the Agency's Physical Ability Test until they have been offered the agreed upon number of hours for physical fitness activities per pay period for at least four months.