64 FLRA No. 148

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1501
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
446 AIRLIFT WING
MCCHORD AIR FORCE BASE,
WASHINGTON
(Agency)

0-NG-3052

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DECISION AND ORDER
ON A NEGOTIABILITY ISSUE

May 25, 2010

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Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute), and concerns the negotiability of one proposal that would modify the uniform that an Air Reserve Technician (ART) must wear when performing work while in civilian status. The Agency filed a statement of position (SOP), to which the Union filed a response.

For the reasons that follow, we find that the proposal is outside the duty to bargain. Accordingly, we dismiss the petition for review.

II. Background

ARTs are dual-status technicians who are federal civilian employees, but are also required as a condition of employment to maintain membership in the Selected Reserve. SOP at 4. In response to an Agency decision to require ARTs to wear the military uniform while working in a civilian capacity, the Union put forth the proposal at issue here. Record of Post-Petition Conference (Record) at 2.

III. Proposal

A. Wording

> Military insignia may not be displayed on any part of the uniform worn by USC Title 5, Dual Status Bargaining Unit Employee (BUE), while in a civilian status. In lieu of "Air Force" tape on the uniforms, the tape is replaced with "DoD Civilian" tape or patch for Flight Suit[s].

Petition at 4; Record at 1.

B. Meaning

The parties agree that the proposal would modify the military uniform that ARTs are required to wear while working in civilian status. Record at 2. Specifically, the proposal would remove military rank insignia from the uniform. *Id.* In addition, the proposal would replace tape -- or a patch, for flight suits -- that currently reads "Air Force[,]" with tape or a patch reading "DoD Civilian[.]" *Id.*

IV. Positions of the Parties

A. Agency

The Agency contends that the proposal is bargainable only at the election of the Agency as a method and means of performing work under § 7106(b)(1) of the Statute.[1] SOP at 1. The Agency asserts that it requires ARTs to wear the military uniform "to foster military discipline, promote uniformity, encourage *esprit de corps*, increase the readiness of the military forces for deployment, and enhance identification of the ARTs as a military organization because of the unique positions ARTs hold within the Air Force." *Id.* at 4. The Agency cites Authority precedent holding that "the ability to prescribe the specific type of military uniform is critical to achieving [these] purposes[.]" *Id.* at 5 (citing *Ass'n of Civilian Technicians, Wis. Chapter*, 26 FLRA 682, 686 (1987) (*ACT*)). The Agency contends that the "primary role of an ART is to train other reservists[,]" and that ARTs' "planning,

1. Section 7106(b)(1) of the Statute provides, in pertinent part, that "[n]othing . . . shall preclude any agency and any labor organization from negotiating . . . at the election of the agency, . . . on the technology, methods, and means of performing work[.]"

scheduling, and conduct of training" are military responsibilities that are vital to the "combat-ready posture" of their units. SOP at 4, 5. In this connection, the Agency notes that ARTs are subject to an immediate call to active duty in the event that their unit is mobilized. *Id*. at 4. Thus, the Agency argues, "ARTs' unique role makes the wear of the military uniform indispensable as a constant reminder they are members of an inherently military organization which is subject to mobilization at a moment's notice." *Id.* at 5 (citing *ACT*, 26 FLRA at 686).

Additionally, the Agency argues that the proposal is not an appropriate arrangement under § 7106(b)(3) of the Statute because the composition of military uniforms is not negotiable, and a proposal allowing employees to wear "a uniform without rank or any other military insignia, which basically amounts to a civilian/nonmilitary uniform" would "excessively interfere" with the Agency's right to determine the methods and means of performing work. SOP at 1, 5, 7. In this regard, the Agency contends that the military nature of the uniform is essential to achieving the purposes of the uniform requirement, as discussed above. *Id.* at 5. For support, the Agency cites: *AFGE, Local 3006*, 32 FLRA 539 (1988) (*AFGE*); and *ACT*, 26 FLRA at 686-87. *See* SOP at 3.

B. Union

The Union argues that ARTs' military rank insignia "means absolutely nothing" while in civilian status, and, thus, "not wearing the insignia will not interfere with methods [or] means . . . , but will further the goals of the Agency by eliminating any confusion." Petition at 1. According to the Union, the Agency's requirement that ARTs wear a uniform that includes military insignia and "Air Force" tape does not foster military discipline, promote uniformity, or encourage *esprit de corps* because the Agency prohibits ARTs from exercising military authority based on rank while working in civilian status. Response at 4-5.

The Union also argues that the proposal is an appropriate arrangement under § 7106(b)(3) of the Statute. *Id.* at 1; Petition at 1. In this regard, the Union asserts that the uniform requirement adversely affects ARTs because requiring them to wear military rank insignia in civilian status -- while forbidding them from exercising the privileges or authority of that rank -- is confusing, "embarrassing and humiliating[,]" and causes "st[r]ess and controversy." Response at 5. In this regard, the Union alleges that ARTs regularly work at the direction of military personnel whose military rank is less than the ART, and that wearing rank insignia and "Air Force" tape while in civilian status confuses non-ART military and civilian personnel about the chain of command. *Id.* at 5-6. The Union acknowledges previous Authority decisions concerning the military uniform requirement for dual-status technicians in the National Guard, but argues that these decision are distinguishable based on the facts that: (1) National Guard military rank carries authority and responsibilities even in a civilian status; and (2) National Guard technicians -- unlike ARTs -- have policing powers over non-military civilians. *Id.* at 2-4. The Union further asserts that the proposal would not decrease the readiness of the military forces for deployment because it takes a minimum of three days to complete the preparations necessary to deploy an ART, and each ART "has a complete set of military uniforms with rank insignia ready for wear in the event of a recall to active duty[.]" *Id.* at 5, 7-8.

V. Analysis and Conclusions

A. The proposal concerns the methods and means of performing work within the meaning of § 7106(b)(1) of the Statute.

There are two prongs to the Authority's test used to determine whether a proposal concerns the methods or means of performing work. First, the proposal must concern a "method" or "means" as defined by the Authority. *See, e.g., Gen. Servs. Admin.*, 54 FLRA 1582, 1589 (1998). In this regard, the Authority construes the term "method" to refer to "the way in which an agency performs its work" and the term "means" to refer to "any instrumentality, including an agent, tool, device, measure, plan, or policy used by an agency for the accomplishment or furtherance of the performance of its work." *Id.* at 1589-90 (citations and footnote omitted). Second, it must be shown that: (1) there is a direct and integral relationship between the particular methods or means the agency has chosen and the accomplishment of the agency's mission; and (2) the proposal would directly interfere with the mission-related purpose for which the method or means was adopted. *Id*. at 1590 (citing *Ass'n of Civilian Technicians, Ariz. Army Chapter 61*, 48 FLRA 412, 420 (1993)).

The Authority has consistently held that the requirement that civilian military technicians wear a prescribed military uniform constitutes management's determination of the methods and means of performing work within the meaning of § 7106(b)(1) of the Statute. *AFGE, Local 1869*,

63 FLRA 598, 599 (2009) (*Local 1869*); *NFFE, Local 1655*, 35 FLRA 740, 743 (1990); *AFGE*, 32 FLRA at 541; *ACT*, 26 FLRA at 686. Moreover, where, as here, an agency imposes this requirement in order "to foster military discipline, promote uniformity, encourage *esprit de corps*, increase the readiness of the military forces for early deployment and enhance identification of the [agency] as a military organization[,]" the Authority has held that "the type of uniform, *i.e.*, a military uniform, is critical to achieving the purpose for which the [a]gency has adopted the uniform requirement." *NAGE, SEIU, AFL-CIO*, 23 FLRA 730, 732 (1986) (*NAGE*). *See also Div. of Military & Naval Affairs, State of N.Y., Albany, N.Y.*, 15 FLRA 288, 292-94 (1984), *aff'd sub nom. N.Y. Council, Ass'n of Civilian Technicians v. FLRA*, 757 F.2d 502 (2d Cir. 1985) (*Albany*) (citing judicial determinations of the "interrelationship between the duties performed by technicians and the ability of the National Guard to maintain its combat readiness" and testimony that "'technicians function in a more military fashion if they wear the military uniform[]'" (quoting *Bruton v. Schnipke*, 370 F. Supp. 1157, 1163 (E.D. Mich. 1974))). In addition, the Authority has held that the composition of the prescribed military uniform is nonnegotiable, *ACT*, 26 FLRA at 687, and that "[n]onmilitary additions to or modifications of the required uniform are incompatible with the purpose of maintaining the military identity of civilian technicians which is necessary to the accomplishment of their mission." *AFGE*, 32 FLRA at 543. Where the Authority previously reviewed a proposal to modify ARTs' military uniform requirement to impose a "civilian uniform" in order to "alleviate . . . rank issues[,]" the Authority held that allowing ARTs to deviate from the prescribed military uniform would affect the Agency's right to determine the methods and means of performing work. *Local 1869*, 63 FLRA at 598-99.

Because the Union has not provided the Authority with a reason to reconsider the foregoing precedent, we find a direct and integral relationship between the Agency's accomplishment of its mission and its use of the military uniform to constantly remind ARTs about the military nature of their work and the importance of their units' combat readiness. *See Local 1869*, 63 FLRA at 599; *NAGE*, 23 FLRA at 732. The Union's proposal would essentially convert the military uniform to a civilian one by removing military rank insignia and replacing the uniform's "Air Force" tape or patch with tape or a patch reading "DoD Civilian." Record at 1-2. Because this transformation of the ART uniform directly interferes with the Agency's purpose for its *military* uniform requirement, we find that the Union's proposal affects the Agency's exercise of its right to determine the methods and means of performing work within the meaning of § 7106(b)(1) of the Statute.

C. The proposal is not an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute.

In determining whether a proposal is an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute, the Authority applies the analysis set forth in *NAGE, Local R14-87*, 21 FLRA 24 (1986). Under that analysis, the Authority first determines whether the proposal is intended to be an arrangement for employees adversely affected by the exercise of a management right. *Id.* at 31. If the Authority finds the proposal to be an arrangement, then the Authority will determine whether it is appropriate or whether it is inappropriate because it excessively interferes with management's rights. *Id.* at 31-33. In doing so, the Authority weighs the benefits afforded to employees under the arrangement against the intrusion on the exercise of management's rights. *Id.*

Even assuming that the Union's proposal constitutes an arrangement, we find, for the following reasons, that it does not constitute an appropriate arrangement because it excessively interferes with management's right to determine the methods and means of performing work.

With respect to the benefits that the proposal would afford employees, the Union argues that the proposal would eliminate certain negative effects that flow from the uniform requirement. In this connection, the Union argues that requiring ARTs to wear rank insignia while in civilian status is "embarrassing" and causes "confusion[,]" "st[r]ess[,] and controversy" because the ARTs are not permitted to exercise rank authority while working as civilians, and typically outrank their supervisors. Response at 5-6. However, the proposal would not change the fact that ARTs routinely outrank their supervisors and are unable to exercise rank authority while in civilian status. The embarrassment or confusion caused by the fact that the ARTs must work at the direction of someone with a lower military ranking *while wearing rank insignia* appears to be a relatively minimal adverse effect, and the benefits provided by the proposal would be fairly minimal.

With respect to the degree of intrusion on the exercise of management's rights, as discussed

previously, the Agency requires ARTs to wear the military uniform "to foster military discipline, promote uniformity, encourage *esprit de corps*, increase the readiness of the military forces for deployment, and enhance identification of the ARTs as a military organization because of the unique positions ARTs hold within the Air Force." SOP at 4. In cases where the National Guard has articulated an identical purpose for its military uniform requirement for dual-status technicians, the Authority has held that "the type of uniform, *i.e.*, a military uniform, is critical to achieving the purpose for which the [a]gency has adopted the uniform requirement." *NAGE*, 23 FLRA at 732. *See also Albany*, 15 FLRA at 290-94. Further, in National Guard decisions, the Authority has expressly held that proposals to modify the composition of the prescribed military uniform or allow dual-status technicians to elect to wear a nonmilitary uniform excessively interfere with management's right to determine the method and means of performing work and, thus, are not appropriate arrangements under § 7106(b)(3) of the Statute. *See AFGE*, 32 FLRA at 543; *ACT*, 26 FLRA at 687; *NAGE*, 23 FLRA at 732.

The Union attempts to distinguish these decisions by stating that -- unlike the ARTs -- National Guard dual-status technicians may exercise authority based on rank even while in civilian status.[2] In this regard, the Union argues that the proposal would not frustrate the articulated purposes of the Agency's uniform requirement because requiring ARTs to wear rank insignia, "which has absolutely no meaning" in civilian status, thwarts rather than fosters *esprit de corps*. Response at 5. Similarly, the Union argues that the proposal's removal of both military insignia and "Air Force" tape from the ART uniform does not undermine discipline or uniformity because military rank is not recognized in a civilian status. *See id.* at 4-5.

There is no indication that the Authority's numerous decisions finding the military uniform requirement for National Guard dual-status technicians nonnegotiable were in any way based on the fact that the affected technicians were authorized to exercise military rank even in civilian status. *See AFGE*, 32 FLRA at 543; *ACT*, 26 FLRA at 686-87; *NAGE*, 23 FLRA at 732. Instead, these decisions rely on the military uniform's role as a "constant reminder" to dual-status technicians that their work is essentially military with implications for the combat readiness of their units. *ACT*, 26 FLRA at 686. *See also Albany*, 15 FLRA at 294. In this connection, the Authority has stated:

> [B]ecause the traditional means of instilling *esprit de corps* and military discipline are not available for use with personnel who are employed in a civilian status, the wearing of the military uniform is indispens[a]ble as a constant reminder to technicians that they are members of an organization which is essentially military and subject to mobilization at a moment's notice.

ACT, 26 FLRA at 686 (citing *Albany*, 15 FLRA at 294). Here, the Agency has articulated an identical purpose for its uniform requirement, which depends on the *military uniform* as such, regardless of the ARTs' inability to exercise authority based on rank while they are in civilian status. *See NAGE*, 23 FLRA at 732. Moreover, the Union's proposal does more than remove indicators of rank; it effectively converts the military uniform into a civilian uniform by both removing military insignia and changing the "Air Force" tape on the uniform to expressly identify the wearer as a "Civilian." Record at 1-2. Because the military uniform can serve as a "constant reminder" to ARTs that they "are members of an inherently military organization which is subject to mobilization at a moment's notice[,]" the proposal would seriously undermine the purposes for which the Agency determined that the uniform requirement was necessary. SOP at 5. *See ACT*, 26 FLRA at 686; *AFGE*, 32 FLRA at 543.

In addition, the Union argues that the uniform requirement does not increase the readiness of the military forces for deployment because it takes a minimum of three days to complete the preparations necessary to deploy an ART, and each ART "has a complete set of military uniforms with rank insignia ready for wear in the event of a recall to active duty[.]" Response at 5, 7-8. However, the uniform requirement's role in increasing the readiness of the military forces for deployment is not limited to the ability of an individual ART to quickly deploy in the proper uniform. The Agency asserts that the "primary role of an ART is to train other reservists[,]" and that "[m]aintaining combat-ready posture depends directly on [ARTs'] ability to perform this aspect of the job." SOP at 4, 5. Thus, as discussed above, the Agency requires ARTs to wear the military uniform as a "constant reminder they are

2. The Union attempts to further distinguish our National Guard decisions by noting that the National Guard dual-status technicians have policing powers over non-military civilians. Response at 3. Because Authority decisions on this issue do not rely upon the National Guard's provision of emergency civil services, we reject this argument.

members of an inherently military organization" and "operate in an inherently military environment" so that they will conduct training while keeping in mind that their training duties "are vital to their units' military readiness." *Id.* at 5. *See also Albany*, 15 FLRA at 292-93.

Balancing the parties' respective interests, we find that the proposal's intrusion on management's right to determine methods and means outweighs the benefits that the proposal would afford employees. Accordingly, we find that the proposal excessively interferes with the right to determine methods and means and, thus, is not an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute.

For the foregoing reasons, we find that the proposal is outside the duty to bargain.

VI. Order

The petition for review is dismissed. The proposal is bargainable only at the election of the Agency.