

In the Matter of

DEPARTMENT OF THE AIR FORCE
LACKLAND AIR FORCE BASE
LACKLAND, TEXAS

and

LOCAL 1367, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 12 FSIP 57

ARBITRATOR'S OPINION AND DECISION

Local 1367, American Federation of Government Employees, AFL-CIO (Union) 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 Department of the Air Force, Lackland Air Force Base, Lackland, Texas (Employer).

After an investigation of the request for assistance, which arises from bargaining over the impact and implementation of the Employer's decision to require Air Reserve Technicians (ARTs^{1/}) to wear the military uniform while performing their civilian jobs, the Panel directed the parties to mediation-arbitration with the undersigned. On June 8, I conducted a pre-hearing conference call with the parties and FSIP Chief Legal Advisor Donna DiTullio to explain the med-arb process, to answer questions, and to advise the parties as to how to prepare to maximize the effectiveness of our time together.

Accordingly, on June 22, 2012, a telephonic mediation-arbitration session was held with representatives of the parties. During the mediation phase, the parties addressed

1/ Although ARTs are in civilian positions, as a condition of employment, an incumbent must maintain active duty status as a military reservist in the Air Force. Reserve duty requires ARTs to serve 1 weekend a month and 2 weeks a year in the military reserves. While on military reserve duty, ARTs must wear the military uniform that is provided by the Air Force.

their interests and positions with respect to the issues^{2/}; ultimately, however, they were unable to come to a resolution and the matter was submitted for arbitration. In reaching this decision, I have considered the entire record in this matter, including the parties' final offers and the Union's post-hearing written statement of position; the Employer elected not to submit a post-hearing brief.

BACKGROUND

The primary mission of Lackland Air Force Base is to provide basic training for all non-prior service Airmen in the regular Air Force, Air National Guard, and Air Force Reserve. The Union represents a bargaining unit consisting of approximately 3,000 non-professional employees; of those, approximately 500 are ARTs assigned to the 433rd Air Base Wing where their duties mainly include maintaining aircraft, training reservists and serving on flight crews. Other ARTs perform administrative duties. The parties' collective-bargaining agreement (CBA) expired in 2009, but its terms and conditions are being followed as past practices.

ISSUES AT IMPASSE

The Panel asserted jurisdiction over the following issues: (1) the number and types of uniform articles to be provided to ARTs, uniform replacement, and whether ARTs should receive a monetary supplement to purchase additional uniform items; and (2) whether lockers and changing facilities should be provided for ARTs so they may change in to and out of their military uniform at the beginning and end of the workday.

POSITIONS OF THE PARTIES

1. Uniforms

a. The Employer's Position

The Employer proposes the following:

2/ At the outset of mediation the Union complained that it did not believe the parties were at impasse over its latest proposal because, previously, the Employer had claimed it was nonnegotiable. During the mediation phase, however, the parties were given full opportunity to continue the bargaining process over their respective proposals.

Employer will issue uniform items consistent with requirements in AFI 36-2903 for ARTs to be in uniform in civilian status, to include replacement in kind. In addition, employees will also receive a one-time payment of \$150 for purchase of additional uniform items.

The Employer contends that it is important to take into consideration that ARTs, in their capacity as military reservists, are authorized to receive four sets of the Airman Battle Uniform (ABU), and the blue uniform. These are the same uniforms they will be required to wear in their civilian jobs as ARTs. The \$150 "stipend" could be used by ARTs to purchase two additional sets of ABU blouses and trousers that would give them a total of six ABUs, more than enough for every workday. The Employer is willing to expeditiously address issues employees may encounter with uniform replacement.

The Employer also contends that the Union's proposal, which would require the Employer to provide each ART with 11 sets of uniforms, is unjustified, unwarranted, costly and fails to take into consideration that ARTs already have four sets of uniforms provided to them from "the military side of the house." It argues that there is no need to impose on the Employer the additional expense of procuring numerous uniforms for ARTs when they already have several sets available to them.

b. The Union's Position

The Union proposes the following:

The Agency will provide to civilian bargaining-unit employees all of the elements required to be fully and properly uniformed, including but not limited to the following items:

Airman Battle Uniform

1. Five (5) ABU pants (utility trousers)
2. Five (5) ABU shirts (utility shirt/blouse)
3. Five (5) pairs of foliage green boot socks
4. Five (5) sand colored T-shirts
6. Two (2) pairs of foliage green boots
7. Two (2) pairs of cold-weather foliage green colored gloves
9. One (1) ABU Field Jacket
10. One (1) Gortex Jacket

11. One (1) Gortex Jacket Liner
12. One (1) Gortex pants
13. One (1) ABU duffel bag
14. Five (5) pairs of thermal long johns
15. Five (5) "night shirts"
16. One (1) scarf
17. One (1) watch cap (sock hat)
18. One (1) pair regulation sunglasses
19. One (1) set of rain gear

Dress Uniforms

For each day of the administrative work week that a civilian bargaining-unit employee (BUE) will be required to wear dress blues, the Agency will provide the following items. (For example, if a BUE must wear blues 2 days a week, two pants, shirts, etc. will be provided.)

Service Blue pants/trousers
Service Blue skirts (for female employees)
Service Blue shirts
White T-shirts (for male employees)
Black nylon trouser socks
Blue neckties (for male employees)
Blue neck tabs (for female employees)

If dress blues are required to be worn for any amount of time while BUEs are working in civilian status, the Agency will provide the following items once annually:

Two (2) pairs of black leather shoes
Two (2) flight caps
One (1) Service Blue coat
Two (2) trouser belts with chromium plate
Two (2) chromium-plated buckles
One (1) all-weather coat with removable liner

If physical training (PT) uniforms of any kind are required to be worn at any time that a BUE is on duty in civilian status, the Agency will supply one complete PT uniform for each day that the uniform must be worn during 1 administrative work week.

All uniform items above are in addition to those provided under AFRC regulations to meet the requirements of military duty. All items will be

issued in full before implementation of the requirement to wear the military uniform while performing work in a civilian status.

The Agency will replace in-kind any unserviceable uniforms and uniform items (stripes, name tags, military patches, etc.) submitted for exchange by the employee. Management agrees to provide a voucher for the sewing/placement/attachment of the required items on the uniform. The Employer will replace uniforms and uniform items submitted for exchange by the employee upon becoming unserviceable within 14 calendar days of the items being turned in by the employee.

For the purposes of this agreement, "unserviceable" will be defined as referring to any uniform item which is no longer fit for use based on changes in the employee's size or fair wear and tear, including but not limited to fading, stains, tears, fraying and stitch marks or discoloration where patches have been removed.

The Union contends that when determining the number of uniforms to be provided to ARTs for wear in their capacity as dual status civilian technicians, it is inappropriate to factor into those numbers the uniforms that were provided to them as military reservists. A small number of uniforms are provided to military reservists because, typically, they are worn only 39 days a year while performing military reserve duty and training. The Employer's requirement that ARTs now should wear a military uniform each workday mandates that ARTs be provided with additional uniforms, one for each day of the workweek. ARTs should have a sufficient number of fresh uniforms available for the entire workweek so that they will not have to launder their uniforms mid-week.

The Union believes that the Employer is attempting unfairly to pass on to ARTs the burden of the impact of its decision that employees are to wear the military uniform. The Union's proposal would ensure a fair and equitable outcome stemming from the Employer's uniform requirement.

The Union also asserts that the Employer's proposal, essentially, would require ARTs to wear the uniforms they were provided as military reservists and seek replacement in-kind when the uniforms no longer are serviceable. Since military

reservists receive only four uniforms (two summer and two winter), it would be necessary for ARTs to launder them frequently inasmuch as they would not have a supply sufficient to cover the entire workweek and monthly weekend reserve duty. Moreover, based upon past experiences with replacement in-kind of unserviceable uniforms, ARTs have found that unit clothing monitors have declined to issue vouchers to ARTs for the purchase of replacement uniforms at Military Clothing Sales because there was no money in the clothing budget to provide for the needed replacement uniform.

2. Lockers and Changing Facilities

a. The Employer's Position

The Employer proposes the following:

Bargaining-unit employees are free to use any existing facilities, including base gym facilities, on a daily basis to change into and out of their uniforms.

The Employer contends that it does not prohibit employees from wearing their military uniforms during non-duty time and, if ARTs choose to commute in civilian attire, that is their right. Management, however, does not believe that it should incur the significant expense of providing lockers and changing facilities to ARTs, who do not want to commute while in uniform, when there is an adequate number already available. In this regard, there are six fitness centers on the base, including one that is within 1 mile of where the majority of ARTs work, that are free-of-charge and equipped with lockers and changing facilities. A management survey of 18 buildings and areas where ARTs work reveal a total of 579 lockers of various sizes, more than enough to accommodate the ARTs. Furthermore, each work area has a restroom, a few with benches, which could serve as changing facilities.

b. The Union's Position

The Union proposes that:

The Employer will provide suitable and adequate facilities (rooms) for employees to change clothing into the required uniform and secured means to store personal belongings (lockers). A full-size personal locker, large enough to store and hang up civilian clothes and uniform items, will be made available at

no cost to the employee and assigned to each employee who requests one.

These lockers will be made available to each requestor prior to the effective date for the requirement to wear uniforms. The location of these lockers will be convenient to the work site of the employees who use them.

The Union proposes that the Employer provide lockers, sufficient in size to store uniforms and other clothing, for any ART who requests one and facilities for those who want to change in to and out of their uniforms at the beginning and end of their tour of duty. The Union contends that there are "risks inherent" with wearing a military uniform when commuting to and from work and its proposal is an accommodation for those ARTs who do not wish to wear their uniforms outside duty hours. In this regard, if an ART is involved in an accident or incident while wearing a uniform on non-duty time, the employee is likely to be disciplined more severely due to the element of "embarrassment" to the Air Force. Employees should have the option of changing clothing so that they do not have to wear the military uniform on non-duty time. Also, by virtue of their maintenance duties, many ARTs have a tendency to have very dirty uniforms at the end of a workday and they would like to have facilities readily available to shower and change clothes for their commute home.

According to the Union, the Employer's proposal that ARTs use the lockers and changing facilities at the fitness centers is unrealistic because those lockers are for daily use, which the Union interprets to mean, for use while working out at a center. Existing lockers in other buildings on the base are generally too small to accommodate a uniform on a hanger and there are no changing facilities on the base other than those in the fitness centers and in Building 826. Furthermore, there is no women's locker room. Restrooms are not meant to function as changing facilities, contrary to the Employer's contention, because they are too small. The Employer should be compelled to provide employees with a reasonable accommodation for its imposition of a uniform requirement.

CONCLUSIONS

Having carefully considered the arguments and evidence presented in this case, I conclude that the impasse over uniforms/monetary stipends and changing facilities/lockers should be resolved on the basis of a modified version of the

Employer's proposals. Overall, the Union has made some interesting arguments in a well-written post-hearing brief but provided very little in the way of evidence to support their assertions.

On the issue of uniforms, I cannot accept as credible the Union's position that the uniforms provided already by the Air Force to meet the needs of the technicians' military reserve duty should not be considered in this dispute because the Air Force is now imposing a new requirement that the ARTs wear their uniforms while performing their civilian maintenance or other duties. In many ways, this argument calls to mind some of the conversation neutrals are encountering in non-Federal-sector bargaining in which labor organizations are maintaining that economic compensation such as steps in a salary schedule or longevity bonuses should not be included in determining the compensation rate because they are the result of hard fought battles in previous negotiations. In the view of this Arbitrator, however, steps, bonuses, and other economic items, regardless of the tradeoffs that may have occurred or the labor struggles which won them, represent real costs to the employer and, in this or any economic environment, need to be recognized as such and realistically added to the cost of the package. Uniforms already provided to the ARTs as a function of their military reserve status should be included in the consideration: they are in the possession of the ARTs, available for use, and subject to the same replacement guidelines as the civilian technicians also enjoy.

The Air Force, like every other Federal agency and employers in general, is being asked to manage scarce resources wisely. To require the Employer not to consider existing uniforms and provide all new uniforms seems fiscally irresponsible and an almost punitive response to the requirement that ARTs wear uniforms while performing their duties.

In modifying the Employer's proposal my intention is to be clear that, as a result of these negotiations, which involve a recent decision to require ARTs to wear their military uniforms while performing their civilian duties, all ARTs will receive a \$150 stipend to purchase additional uniform items regardless of any previous monetary disbursements.

Finally, I believe that the Union's reliance on *NFFE, Local 1655, and Department of Defense, National Guard Bureau, Illinois National Guard, Springfield, IL, 43 FLRA 1257 (1992)* is misplaced. In that case, the Federal Labor Relations Authority

found no merit in the Agency's argument that "the Agency's uniform allowance was intended for the same purpose as the allowance provided for in the proposal." The Union in this case is contending that "the affected employees do not use the uniforms for the same purpose when they are in military status as when they are in civilian status." The Union has not provided any evidence that the four uniforms that the ARTs currently have, plus the ability to purchase two additional sets with the stipend offered by the Air Force, will not be sufficient for their work as full time civilian technicians.

As to lockers and changing facilities, the Union's case is based on several key arguments: first, that current facilities for changing are inadequate; second, that current lockers for storing clothes are inadequate; third, that there are distinct disadvantages to wearing one's uniforms while coming and going to work; and fourth, that individuals have had problems obtaining clothing vouchers for replacement uniforms from the appropriate office due to a lack of funds.

At the outset, the Union does not dispute the Employer's assertion that there are more lockers available than ARTs. Nor do they contest the testimony of the Chief that "the majority of ARTs come and go in the clothes that they wear." Moreover, the Union presents no evidence about the number of ARTs that are interested in changing facilities and lockers, any data about dissatisfaction or discomfort with existing facilities, or any data about the number of ARTs projected to use such facilities and lockers once they begin wearing the uniform every day.

In a similar fashion, while the Union wants us to believe that military personnel commuting while wearing uniforms may be targeted by police in "order to embarrass the Air Force," they present no evidence or data about the frequency with which this occurs or the number of related cases in the recent past. As such, the Union is asking the Arbitrator to merely accept their statement of a theoretical problem as fact. Similarly, there are absolutely no data of any kind to support the testimony offered during the hearing about servicemen who have experienced difficulty because the uniform replacement fund was temporarily out of money. How big a problem is this? How many people have experienced this problem? Have they experienced it recently? How is this issue impacted by the Employer's offer to expedite the resolution of any individuals who are told that they cannot obtain replacement uniforms because of lack of funds?

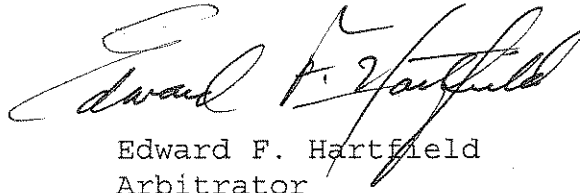
Perhaps the Union's most compelling argument is the lack of a locker room or changing facility for women ARTs. However, once again, the Union leaves this Arbitrator with little concrete data with which to make a decision: how many female ARTs are there among the current ranks? How many female ARTs are there who have mechanical or maintenance responsibilities?

DECISION

Having carefully considered the evidence and arguments presented by the parties, I conclude that a modified version of the Employer's proposals provides a more compelling basis for resolving this dispute. Therefore, I order the parties to adopt the following in resolution of this dispute:

1. The Employer will issue uniform items consistent with requirements in AFI 36-2903 for ARTs to be in uniform while in civilian status, to include replacement in-kind.
2. In addition, the Employer will provide each ART with a payment of \$150 for purchase of additional uniform items, regardless of any prior monetary payments for the purchase of such items.
3. The Employer shall expedite resolution of issues encountered by ARTs concerning difficulties in obtaining replacement vouchers due to funding problems. The Employer shall provide ARTs and the Union with a point-of-contact for ARTs to resolve such issues.
4. ARTs are free to use any existing facilities, including base gym facilities on a daily basis to change into and out of their uniforms.
5. If the existing gym facilities on base in the area where the majority of ARTs work have no facilities for women to change into and out of their uniforms, then the Employer

shall facilitate the establishment of a facility for female ARTs to change and store their clothes within 60 days of receipt of this Decision.

A handwritten signature in cursive script, appearing to read "Edward F. Hartfield".

Edward F. Hartfield
Arbitrator

July 25, 2012
St. Clair Shores, Michigan