

United States of America
BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of)

DEPARTMENT OF DEFENSE)
 NATIONAL GUARD BUREAU)
 NEW HAMPSHIRE AIR NATIONAL GUARD)
 HEADQUARTERS, 157TH AIR REFUELING)
 GROUP)
 PEASE AIR NATIONAL GUARD BASE)
 NEWINGTON, NEW HAMPSHIRE)

and)

GRANITE STATE CHAPTER, ASSOCIATION)
 OF CIVILIAN TECHNICIANS)

Case No. 92 FSIP 112

DECISION AND ORDER

The Granite State Chapter of the Association of Civilian Technicians (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 Defense, National Guard Bureau, New Hampshire Air National Guard, Headquarters, 157th Air Refueling Group, Pease Air National Guard Base, Newington, New Hampshire (Employer).

The Panel determined that the impasse, which arose during negotiations over a successor collective-bargaining agreement, and concerns the area of consideration for the filling of technician vacancies, should be resolved on the basis of written submissions from the parties, with the Panel to take whatever action it deemed appropriate to resolve the dispute.^{1/} The Panel has now considered the entire record.

1/ The Panel had initially determined that the parties should resume negotiations with the assistance of the Federal Mediation and Conciliation Service for a 2-week period to attempt to resolve the issues in dispute, but a settlement was not reached.

-2-

BACKGROUND

The Employer's mission is to maintain aircraft which refuel U.S. and foreign aircraft worldwide. The Union represents approximately 180 civilian technicians, most of whom are in the excepted service. They hold a wide variety of positions in computer, aircraft, and vehicle maintenance, supply, personnel, and civil engineering. The parties' collective-bargaining agreement expired on July 19, 1992, but continues in effect pending the resolution of the instant dispute.

ISSUE AT IMPASSE

The parties are at impasse over whether bargaining-unit employees should receive consideration for vacant bargaining-unit positions prior to nonbargaining-unit candidates.

1. The Union's Position

The Union proposes the following wording:

Filling Technician vacancies via merit principles will be administered in accordance with NHNG [New Hampshire National Guard] TPR 335, dated _____, with the following modifications:

For vacant bargaining-unit positions, the initial area of consideration will be all Excepted Technicians in the New Hampshire Air National Guard. Vacant bargaining-unit positions may be announced concurrently as merit and open. In the event the announcement is concurrent, nonbargaining-unit candidates will not be submitted to the selecting official for consideration until those qualified merit bargaining-unit employees, if any, have been considered and not selected.

Its proposal, properly interpreted and applied, establishes a "fair and equitable policy and procedure" in an area of collective bargaining "that stands out as perhaps the most important" to Federal employees. It would do so by requiring selecting officials to give bargaining-unit members first consideration for promotional opportunities for bargaining-unit vacancies, thereby ensuring that they are not "immediately disadvantaged when competing with AGR [Active/Guard Reserve] personnel who apply for and receive simultaneous consideration for any published job vacancy." In this regard, unlike civilian technicians, AGRs are military personnel who may be selected for vacant positions even if they do not meet minimum qualifications "providing the individual will achieve the minimum qualifications for the position within 9 months after selection and appointment."

-3-

The proposed wording is virtually identical to a provision in the parties' current agreement. The Employer previously "embraced" the Union's interpretation of its meaning "prior to the institution of the AGR program [sometime in the mid-1980's] and military regulations governing their assignments to positions within the various states." Once the AGR program was established, however, the Employer began to violate the terms of the existing provision by simultaneously considering AGR personnel and bargaining-unit employees for vacant positions. The Union seeks to rectify this development by eliminating, once and for all, any ambiguity as to what the provision would require. Finally, affording bargaining-unit members first consideration for bargaining-unit positions would be "at no expense to either the Employer or applicants from any other available source."

2. The Employer's Position

The Employer's proposal is as follows:

Filling technician vacancies via Merit Principles will be administered in accordance with current TPRs and regulations. For vacant bargaining-unit positions, the initial area of consideration will be all Excepted Technicians in the NHANG. Vacant bargaining-unit positions may be announced concurrently as merit and open. In the event the announcement is concurrent, nonbargaining-unit candidates will not be submitted to the selecting official for consideration until those qualified merit bargaining-unit employees, if any, have been considered and not selected.

This wording "is essentially identical" to the Union's. The issue dividing the parties "is not contract language, but rather its interpretation." In this regard, "it is compelled" by governing regulations "to give fair and equal selection and promotion opportunity to AGR employees.^{2/}" Adoption of the Union's proposal, on the other hand, would amount to an abandonment of merit vacancy principles, which are "a vital component of its equal opportunity policy," by requiring preferential treatment of "military technician employees" at the expense of "full-time military duty employees (AGRs)." The Employer's evenhanded application of merit principles "to all full-time employees is a long-established practice." A change in policy at this time "would be a disservice to all employees" with little or no benefit to the Union.

2/ The Employer relies on Air National Guard Regulation 35-03, Sections 2-5 and 2-6, to support its contention.

-4-

CONCLUSIONS

Having examined the evidence and arguments on this issue, we conclude that the dispute should be resolved on the basis of the Union's proposal. The wording shall be modified, however, to make absolutely clear our endorsement of the Union's interpretation of its meaning. At bottom, the parties' disagreement involves the traditional union concern that the integrity of bargaining units be maintained. In our view, the importance of the Union's concern outweighs whatever benefits may accrue from having AGR personnel considered simultaneously with bargaining-unit employees. This is similar to the conclusion we reached in a previous National Guard Bureau decision involving the issue of competitive areas for reduction-in-force (RIF) purposes,^{3/} and nothing in the record of the instant case has persuaded us to change our point of view. Moreover, the fact that AGR applicants already receive advantages in the promotion process by virtue of the regulations that govern them is an additional reason for providing the modest benefit of first consideration to bargaining-unit employee applicants.

The Employer apparently sees little reason to distinguish between bargaining unit and nonbargaining-unit positions.^{4/} Our conviction as to the importance of this matter, on the other hand, is such that we believe it necessary to include additional wording to ensure that the Employer refrains from submitting AGR applicants to the selecting official at the same time as bargaining-unit

3/ See Department of Defense, National Guard Bureau, Michigan Air National Guard and Michigan State Council, ACT, Case No. 90 FSIP 89 (December 6, 1990), Panel Release No. 303.

4/ This is clear from the fact that the Employer specifically concurs with the Union's "Summary of Employer's Position on Issue At Impasse," which states, in relevant part, that:

when a job vacancy is announced for what is considered a bargaining-unit position . . . all applicants for a job vacancy from within the exclusively recognized bargaining unit and any AGR personnel applicants must be interviewed and considered for selection and should an AGR applicant be selected to fill the position, the advertised position is no longer a 'bargaining-unit position' but instead an AGR (active duty) position. (emphasis added)

The parties also apparently have a difference of opinion with respect to the status of bargaining-unit employees. In this regard, the Union believes they are "civilian technicians," while the Employer refers to them as "military technician employees."

-5-

applicants. While it is axiomatic that contracts are not self-enforcing, our additional wording should make it easier for the Union to administer the contract should the Employer fail to give bargaining-unit applicants first consideration for the bargaining-unit vacancies it proposes to fill.

ORDER

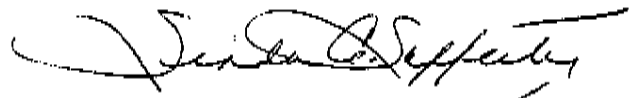
Pursuant to the authority vested in it by the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7119, and because of the failure of the parties to resolve their dispute during the course of proceedings instituted under the Panel's regulations, 5 C.F.R. 2471.6(a)(2), the Federal Service Impasses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

The parties shall adopt the following wording:

Filling Technician vacancies via merit principles will be administered in accordance with NHNG TPR 335, dated _____, with the following modifications:

For vacant bargaining-unit positions, the initial area of consideration will be all Excepted Technicians in the New Hampshire Air National Guard, specifically excluding all AGR personnel. Vacant bargaining-unit positions may be announced concurrently as merit and open. In the event the announcement is concurrent, nonbargaining-unit candidates, including any AGR personnel, will not be submitted to the selecting official for consideration until those qualified merit bargaining-unit employees, if any, have been considered and not selected.

By direction of the Panel.



Linda A. Lafferty
Executive Director

October 2, 1992
Washington, D.C.