

United States of America

BEFORE THE FEDERAL SERVICE IMPASSES PANEL

In the Matter of

U.S. DEPARTMENT OF THE AIR FORCE
BARKSDALE AIF FORCE BASE
BOSSIER PARISH, LOUISIANA

And

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 1953

Case No. 2022 FSIP 025

ARBITRATOR'S OPINION AND AWARD

This case, filed by the National Federation of Federal Employees, Local 1953 (Union) concerns conditions of employment for bargaining unit employees who encumber the position of Air Reserve Technician (ARTs). Specifically, these issues arose in the context of the Union's negotiations with the U.S. Department of the Air Force, Barksdale Air Force Base, Bossier Parish, Louisiana (Barksdale, Agency, or Management) over the parties' collective bargaining agreement (CBA). The Union filed this dispute pursuant to Section 7119 of the Federal Service Labor Management Relations Statute (the Statute).¹ After an investigation of the Union's request for assistance on March 16, 2022, the Panel formally asserted jurisdiction over all remaining disputed issues and ordered them to be resolved via arbitration conducted by the undersigned Arbitrator. I conducted the hearing virtually on April 20, 2022, and the parties submitted post-hearing briefs on May 4, 2022. The record is hereby closed.

BACKGROUND AND BARGAINING HISTORY

ART's are Federal employees who are considered "dual status" employees because they are employed both by a Federal Agency and the Air National Guard. In their status as the former, they fall under Title 5 of the United States Code. In the latter status, they fall under Title 10 of the United States Code. Their primary

¹ 5 U.S.C. §7119.

responsibilities include servicing Air Force aircraft and providing training. The Agency provides support to the U.S. Air Force. In particular, the host unit at the Agency is the 2nd Bomb Wing, the oldest bomb wing in the Air Force. It is assigned to the Air Force Global Strike Command's Eighth Air Force. Additionally, the Agency houses the 307th Bomb Wing, which is an Air Reserve Wing that houses 190 ARTs. The Union represents 837 appropriated fund employees in a variety of positions, including employees who encumber ART positions.

The Agency informed the Union in 2009 that it had received instruction that it would be required to order all ART's on base to wear a military uniform at all times on duty, even when they are acting in their capacity as a civilian employee. For several years informal discussions with the Union started and stopped. Then, in 2019, the Agency announced that it was implementing the aforementioned instruction. As a result, the Union filed a grievance and, ultimately, invoked arbitration. The arbitrator ruled against the Union, and the Federal Labor Relations Authority eventually denied the Union's exceptions to that arbitration decision.²

Despite the foregoing history, the parties turned to renegotiating their successor CBA in 2020. After several months of negotiation, they arrived at one remaining article concerning conditions of employment for ARTs. They could not reach agreement over it and, as a result, I am now required to impose terms upon them.

ISSUES

Parts of eight sections remain for resolution, and most of them revolve around the wearing of the ART uniform. So, it is appropriate for me to begin with an examination of the article that is arguably at the heart of this dispute – Section 2 -- because it directly addresses uniform wear.

I. Section 2-Uniform Wear and Titles

A. Union Position

The Union offers the following proposals:

2.1 Wear of the uniform while performing duty in civil service status is at the option of each ART employee.

2.2 ARTs will not be requested to use any military clothing or personal equipment provided by their military component in the performance of

² See 72 FLRA No. 59 (2021).

their civilian duties in order to not hinder the employees requirement for these items to be serviceable in their separate military positions.

2.3 ARTs while in civilian status will not wear a military rank, military designator tape, or use their military title unless in connection with commercial enterprises and have clearly indicated their inactive Reserve status. However, ANY use of military titles is prohibited if it in any way casts discredit on the DOD or gives the appearance of sponsorship, sanction, endorsement or approval by the DOD.

2.4 While wearing a uniform, the employer will ensure the employee is distinguishable from active military personnel through the use of distinctive patches and nametags at the employer's costs.

2.5 The Employer agrees and ensures that while in civilian status, proper civilian titles will be used. If Air Reserve Technicians decide to wear the military uniform while performing civilian duties, they will wear the "D.O.D CIVILIAN" tape in place of the military designator tape. The DOD civilian insignia will be worn in place of the military rank patch, see Section 7. The same insignia and designator tape will be worn while participating in military flights as crew members/crew chiefs when wearing flight clothing.

2.7 Civilians wearing this Standard US Service military uniform will not be required to adhere to active duty military grooming standards while in civilian status. Grooming standards may vary with job duties and specific health and safety requirements.

2.8 ARTs in civilian status are not required to abide by military customs and courtesies but will adhere to AFI 36-703, Civilian Conduct and Responsibility, as required by all federal civilian employees.

2.10 To assist in preventing a civilian employee from being targeted due to misrepresentation of an active military member, ARTs in civilian status may choose to not report or exit the work center in uniform. This is to include an employee's lunch break.

The Union adamantly opposes the idea that ART's should be mandated to wear the uniform at all times while in civilian status, and its proposals reflect that position. The ART program was instituted in 1958, but Agency employees have only been required to wear the uniform in civilian status since 2019. So, the Union believes its proposal is the actual long-standing practice. Moreover, as the Union states in its post hearing brief:

ARTS in uniform have to observe military customs and courtesies such as saluting and addressing active-duty personnel appropriately and have been counseled and disciplined for failure to do so. There have been documented problems with the availability of uniforms and parts thereof. There was testimony that the uniforms caused active duty personnel to be confused about ART civilian status. ARTs have to incur extra personal expenses such as frequent haircuts and purchasing of shaving accessories to maintain grooming standards while in uniform. The union witnesses testified that ART morale has suffered since the implementation of the uniform requirement, and the requirement has been a factor in many ARTs leaving their positions at Barksdale.³

The Union rejects the Agency's proffered rationales for uniform wear. Although the Agency claimed that the uniforms are necessary for "good order and discipline," their witnesses could not offer any specific problems at the Agency's facility from 1958 to 2019. Instead, the Union notes, the witnesses only offered vague assertions concerning *other* facilities. On balance, the Union claims, the arguments support only the Union's position.

B. Agency Position

The Agency offers the following proposals:

2.1. The uniform will be worn in accordance with applicable regulatory guidance. ARTs may wear DoD Identification Cards, the Common Access Card (CAC), in accordance with regulations guidelines. The CAC is worn on the front of the body, displayed above the waistband with DoD and below the neck in accordance with applicable regulations. The union can supply bargaining unit employees with a lanyard consistent with regulatory guidance. The Union may imprint NFFE Local 1953 on the lanyard.

2.7. ARTs are required to adhere to Air Force grooming standards when wearing the military uniform.

2.8. ARTs in civilian status are required to abide by military customs and courtesies in accordance with regulatory guidelines.

2.10. ARTs who choose not to enter or exit the work center in military uniform will not be granted duty time to change into military uniform, as all civilian employees are expected to remain properly attired and groomed for the requirements of their position while in a duty status unless otherwise authorized by management.

³ Union Brief at 2.

The Agency argues that the ART uniform requirement is the result of three (3) different regulations proscribed by the Secretary of the Air Force.⁴ Agency witnesses testified that the uniform promotes “total force integration” between the ART’s, active duty members, reserves, and members of the national guard. The uniforms are necessary for military readiness and promote morale amongst the Air Force as demonstrating one military force ready for active deployment. Indeed, 60 Air Force bases utilize over 8,500 ART’s and *all* of these individuals wear the uniform.

Management will allow the ART’s to wear lanyards identifying their status. As for safety concerns about those lanyards dangling into hazardous equipment, the Agency claims that employees can wear coveralls over their uniforms. Management also feels it would be inappropriate to depart from grooming and military customs because doing so would hamper the integration aspect of the uniform. Finally, the Agency expects employees to show up to their duty station in proper work attire.

C. Conclusion

After consideration, **I will impose a hybrid Section 2 that includes *only* the following sections:**

- **Union Sections 2.4, a modified 2.5 (which adds minor language as described below), and 2.8; and**
- **Agency Sections 2.7 and 2.10**

The parties, particularly the Union, placed the most significance on this Section because its outcome directly determines whether or not the bargaining unit employees in this dispute will continue to wear uniforms as currently proscribed. The Union proposes making uniform wear optional and the Agency maintains that it should be mandatory. On balance, I believe the parties’ presentations lead me to conclude that uniform wear is too significant to permit a total deviation from the current practice at Barksdale.

The Agency presented witness testimony from two (2) ART’s who are also in civilian management. One of those witnesses, Brigadier General W.K.,⁵ is a member of senior leadership in the Air Force. The witnesses testified that ART’s on Barksdale – and throughout the United States – work side-by-side with active military individuals, and the latter are always in uniform. The Brigadier General offered persuasive testimony that having all of these individuals in the same uniform in the workplace enhances unit cohesiveness, fosters military readiness,

⁴ See Agency Brief at 3 (citations omitted).

⁵ For any witnesses, I will use their initials.

and establishes “total force readiness.” As the Brigadier General noted in his testimony, the majority of services provided by employees on the base are military related in nature. So, I find persuasive the notion that ART’s in uniform better bolster the military-based mission of the Air Force and the DoD.

In addition to the above, a Labor Relations (LR) Specialist employee for the Agency testified that every Air Force facility where ART uniforms are involved, have implemented their wear in some form or the other. Thus, adoption of the Union’s “optional” position would make the Agency the outlier. That is, out of 60 facilities it would be the *only* facility where uniform wear is not required. Given the credible need for military cohesion, I do not believe that it would be appropriate to permit this facility to be the sole facility in the United States that does not mandate the wear of the uniform.

The Union presented testimony that focused primarily upon morale and confusion. For example, the Union focused on ART turnover and the inability to fill ART positions. But, via cross examination and Agency testimony, it was unclear that there was a link between turnover and wearing of the uniform. Moreover, it was less than clear that there actually is any significant turnover. The Union also raised valid concerns about the inability of some employees to secure replacement parts for uniform items that are damaged or are no longer suitable for wearing. And, while it was clear that the Agency’s operations could do a more expedient job of turnaround, it was equally clear that the Agency acknowledges its responsibility to provide such items. Moreover, the Union has the ability to file grievances should the Agency fail to appropriately provide replacement items.⁶

While I agree with the Agency that it continues to remain permissible to require the wearing of the uniform, I agree with the Union’s position that a modified version of the uniform is appropriate. The Union presented testimony concerning confusion arising out of the inability of employees to distinguish military status amongst its own workforce. Indeed, during the hearing it was not clear that two (2) uniformed Agency witnesses were participating in their civilian capacity until the Union’s cross examination clarified that point. So, I had a first-hand experience with the confusion that can arise under this system. And, while I do not believe it would be appropriate to make uniform wear entirely optional in order to ameliorate morale issues and confusion, I think some modification is warranted in order to alleviate some of these problems.

Based on the foregoing, I believe it is appropriate to accept the Union’s proposed section 2.4 and a modified version of its 2.5 that creates a

⁶ On the eve of the arbitration, the Union provided a written statement from a bargaining unit employee who claimed that, as a result of having to wear uniform boots on a regular basis, he has developed a medical condition that requires surgery. I do not attach significant weight to that statement because it contains multiple levels of hearsay and is also based upon medical speculation. I also offer no opinion concerning the applicability of reasonable accommodation standards to such issues.

modified patch for wear on the uniforms that distinguish the employee's civilian status.⁷ The Union presented testimony that similar patches are worn for overseas DoD personnel in uniform, and the Agency agreed. Although the Agency argued it would be inappropriate to apply similar patches stateside, it offered little persuasive rationale against this idea. In its post-hearing brief, the Agency argued that these patches are inappropriate because the Secretary of the Air Force has proscribed one type of uniform per Air Force regulation.⁸ This is circular reasoning. Although the Secretary certainly has the authority to issue regulations, the Secretary *must* also engage in collective bargaining under the Statute unless legally excused from doing so. That the Secretary announces something to be an immutable condition of employment does not make it so within the universe of public sector collective bargaining.

Based on the foregoing, I will modify the Union's Section 2.5. In particular, I will add the below bolded language in the second sentence:

2.5 The Employer agrees and ensures that while in civilian status, proper civilian titles will be used. Air Reserve Technicians, **when** wearing the military uniform while performing civilian duties, **will** wear the "D.O.D CIVILIAN" tape in place of the military designator tape. The DOD civilian insignia will be worn in place of the military rank patch. (See Section 7). The same insignia and designator tape **will** be worn while participating in military flights as crew members/crew chiefs when wearing flight clothing.

As a result of this imposition, I will also exempt these employees from participating in attendant military customs while in uniform, e.g., saluting, etc. The purpose of the "civilian tape" item is to distinguish these employees from their active-duty peers. This difference would be undercut, in my opinion, if uniformed ART's were otherwise required to act in a manner indistinguishable from active-duty personnel. The Agency argues that exempting ART's from the foregoing standards will "degrade the public's perception of the military."⁹ The Agency offered little empirical evidence to support this position. To the contrary, the Agency argued throughout these proceedings that ART's work frequently alongside military personnel. That is, there was very little to no evidence presented that demonstrated these individuals work with the public. So, it seems there would be little opportunity for degradation of "public perception."

However, I am disinclined to approve the Union's proposal that would exempt the ART's from grooming standards. Although the imposed patch distinguishes the

⁷ The patches are found in the Union's proposed Section 7, and my decision is based upon the conclusion that those are the patches/identifiers to be used. **Thus, the Union's proposed Section 7 is also adopted.**

⁸ See Agency Position at 5.

⁹ See *Id.* at 7.

uniform, I do not believe it does so in such a drastic manner so as to render the uniforms significantly different amongst the various military personnel on base. Conversely, exempting Union ART's from uniform grooming standards would result in more drastic departures from the "uniform" look of the ART and Air Force service. I also believe that permitting these exemptions would be inconsistent with the cohesion rationale I have accepted to support wear of the uniform proper.

Finally, I do not believe it is appropriate to permit duty time for employees to change into their uniforms when arriving and exiting the base. The Union analogized uniform wear to "donning and doffing" of equipment found in Fair Labor Standard Act (FLSA) disputes. Aside from the fact that I am unable to offer any legal opinion based upon the FLSA, I believe those matters are distinguishable because they largely concern donning equipment, gear, etc., necessary to perform the actual physical tasks of various duties. By contrast, this matter is more analogous to a dress code scenario, and I believe it is appropriate to expect the relevant employees to appear work ready at their particular workplace.

Based on all the foregoing, I will impose Management's proposals for Sections 2.7 and 2.10 to resolve the remaining disputes in Section 2. But, I will impose the Union's Section 2.8 to resolve the "customs" issue.

II. Section 1-Understanding of Position

A. Union Position

The Union offers the following proposals:

1.1 Air Reserve Technicians (ARTs) are full-time civilian employees who are required to have an active enlistment in the Air Force Reserves. ARTs work in a civilian capacity during the week and as part-time reservists at least one weekend a month and two weeks a year. Employees assigned to an ART position operate under the same provisions as all other civilian Employees when not in military status. Since the Employees are never in both military and civilian status at the same time, conflicts should not occur.

1.2 ART's in civilian status will be governed by all existing civilian directives, regulations and this collective bargaining agreement. The Employer will ensure that civilian and military personnel actions, to include discipline are kept distinctly separate and the processing of these actions are done IAW applicable regulations.

1.3 ART's on civilian status are not subject to the rules and regulations of the UCMJ. Military reservists are subject to UCMJ

jurisdiction or military discipline generally only when they are in a military Inactive Duty for Training (IDT) status or in military active duty status.

1.4 The parties support the Standards of Conduct and Code of Ethics for civilian ART personnel.

In its post hearing brief, the Union admitted there is little meaningful difference between the Union's proposals for this Section and those offered by the Agency. At the hearing, however, a Union witness testified that the Union's concern was emphasizing that only civilian laws should apply in the scenarios identified under the Union's language. And, with regard to its Section 1.4, the Union notes that its proposal is actually the original language offered by the Agency.

B. Agency Position

The Agency offered the following proposals:

1.2. ARTs in civilian status will be subject to all governing laws, regulations, directives and this collective bargaining agreement. Management will review surrounding circumstances of off-duty misconduct that adversely affects an employee's ability to perform duty assignments or negatively reflects upon the Employer. In such cases, management will determine the appropriate corrective action. The Employer will ensure that civilian and military personnel actions to include discipline are kept distinctly separate and the processing of these actions are done IAW applicable regulations.

1.3. ARTs in civilian status are not subject to the rules and regulations of the UCMJ. Wear of the military uniform does not subject ARTs in civilian status to the UCMJ (or military discipline). Military reservists are subject to UCMJ jurisdiction generally only when they are in a military Inactive Duty for Training (IDT) status or in military active duty status.

1.4. The parties support the regulatory guidance on civilian standards of conduct and ethics.

The Agency argues that the purpose of its 1.2 is to retain the "dual status" terminology utilized for ART's under 10 of the United States Code.¹⁰ As for 1.3, the Agency wants to ensure its ability to discipline for off-duty conduct, when applicable. Finally, Management argues that its Section 1.4 is appropriate because

¹⁰ See Agency Brief at 5 (citing 5 U.S.C. §10216).

there is no separate code of civilian conduct for ART's as the Union's Section 1.4 implies.

C. Conclusion

I will impose Management's proposals to resolve the dispute over this section. Although the Union offered testimony in support of its proposals at the hearing, in its brief, it clarifies that there are "not meaningful differences" between the parties' positions.¹¹ I agree with this sentiment in substance, but the Agency's proposals do offer some slight clarity. In this regard, they codify the employees' status as ART's and enshrine the ability of the Agency to discipline, when appropriate. Finally, Management's Section 1.4 carefully omits any implied reference to a standalone code of civilian conduct designed just for ART's. Thus, on balance, the Agency's proposals for Section 1 offer more clarity and shall be adopted.

III. Section 3-Leave

Prior to the hearing, the parties created a joint document that listed the remaining disputed proposals. In that document the Union stated that the parties agreed to accept the Agency's Section 3.1 if I concluded that uniform wear is required. **As I have concluded it is required, I will impose Management's Section 3.1 to resolve this section:**

3.1. ARTs in an authorized Union Official time status may wear appropriate civilian clothes. Representatives of NFFE Local 1953 will not be required to wear the military uniform when performing representational duties on official time or participating in third party proceedings. Such representatives will be authorized a reasonable amount of duty time to change into and out of uniform when performing representational duties.

IV. Section 4-Shift Activity

This Section mostly covers changing in and out of the uniform. But, it also addresses discipline.

A. Union Position

The Union offers the following proposals:¹²

¹¹ Union Brief at 3.

¹² Although this is Section 4, the Union's numbering differs because of the approach taken by its proposal. I have left that numbering intact.

3.1 ARTs who wear a US Service uniform on duty will change on duty time. The Employer will provide up to 15 minutes at the beginning and ending of each work day for the employees to change clothes.

3.2 The Agency will provide adequate facilities for all ART's to change into and out of any type of required uniform. Such facilities will be convenient to the work site of the employees utilizing them. Facilities will have official changing rooms with privacy and will not be located in a restroom. The changing room will have the ability to accommodate the required individuals reporting to the work center for said shift.

3.5 ARTs not on duty status and wearing partial uniform items (pants, hat, etc.) to and from the work center will not have adverse actions implied towards the employee.

The Union argues its position is "fairer." It notes that some of the Union's witnesses testified that it is "difficult" to change uniform off duty. At the hearing, it offered CBA's from other Air Force bargaining units where those employees are granted duty time to change into duty attire.

B. Agency Position

The Agency offers the following proposals:

4.1. Employees are expected to be in uniform while on duty. Employees may change into/out of uniforms before or after their shift.

4.2. Employees are free to use existing facilities on a daily basis within their work areas to change into and out of their uniforms. Employees may also use existing private storage space on a daily basis within their areas for storing their clothing and/or uniforms.

4.5. Wear of the military uniform does not subject ARTs in civilian status to the UCMJ.

The Agency argues that the Union's requested time would amount to approximately one (1) hour per day per employee and hundreds of hours per year for the bargaining unit. This time would be unproductive time that does not support the Agency's mission. The Agency also argues that the Union was unable to demonstrate why current facilities are inadequate for changing purposes. Finally, the Agency argues that "donning and doffing" comparisons are inapplicable because this dispute does not involve equipment. It notes that, although the Union provided CBA's from other Air Force bargaining units where employees were granted duty

time to change into attire, none of those CBA's involved ART's and the military uniform.

C. Conclusion

The first disputed issue involves time for changing in and out of the uniform. **I will impose Management's Section 4.1 rather than the Union's 4.1.** The Union requests 15 minutes of duty time to change into and out of uniform at the beginning and end of each shift. However, I have concluded above that it is appropriate to expect employees to arrive at the workplace in proper attire. Accordingly, the Union's position is rejected here, as well.

The next issue – Agency 4.2 and Union 3.2 – involves facilities for changing in and out of the uniform. The parties agree that employees will be permitted to use Agency facilities to change, but the Union proposes “adequate” facilities to include privacy. Moreover, these areas would *not* be located in restrooms. As noted previously these employees have been wearing uniforms since 2019. Despite this fact, the Union presented little testimony or evidence to establish why existing facilities are not adequate to meet the needs of employees who decide to change in and out of their uniforms on base. **Accordingly, I will impose Agency Section 4.2.**

The final issue is whether employees should be subject to the Uniform Code of Military Justice (UCMJ) when they are in civilian status. The parties agree that they should not be, but the Union requests more specificity. In this regard, the Union proposes language that clarifies that employees would not be disciplined when they are in non-duty status and are wearing only a “partial” uniform, e.g., are only wearing parts of the uniform. At the hearing, the Union testified that some employees have received “verbal counseling” in such situations. The Agency countered that these situations were not counseling, rather, they were simply statements made to the employees about the need to wear an appropriate uniform. I found the Agency's explanation to be more persuasive as it does not appear that the “counseling” led to any form of discipline.¹³ Notwithstanding the lack of discipline imposed in that case, the Union's need for clarity is valid. While the Agency's language is more expansive because it prohibits *any* improper application of the UCMJ, it is reasonable to adopt a modified proposal which combines the language of **Agency Section 4.5 and the Union's 3.5 as follows:**

Wear of the military uniform does not subject ARTs in civilian status to the UCMJ. ARTs not on duty status and wearing

¹³ In Union Ex. 24, the Union provided an August 30, 2021, statement from an ART wherein he claimed to have received a letter of counseling (LOC) as a result of partial uniform wear issues during a military drill weekend. But, the witness provided little information surrounding those circumstances. More importantly the Union did not provide the alleged LOC itself, thereby making it difficult for me to assess the validity of the employee's claim.

partial uniform items (pants, hat, etc.) to and from the work center will not have adverse actions implied towards or imposed upon them.

V. Section 5-Meal Periods

This article concerns circumstances surrounding meal periods for employees. There are two (2) issues left for resolution.

A. Union Position

The Union offers the following language:¹⁴

4.3 Employees will be allowed to utilize a suitable, comfortable, and designated inside area with sanitation facilities during their rest breaks and lunch periods.

4.1 A reasonable amount of time will be allowed prior to and after the lunch period to change into and from uniforms.

The Union argues its position is based on morale. Employees who are unable to leave the flight area for meal periods have to eat in dirty and noisy areas.

B. Agency Position

The Agency offers the following:

5.1. Employees are free to use existing facilities on a daily basis within their work areas during rest and meal breaks.

5.2. ARTs who choose not to enter or exit the work center in military uniform will not be granted duty time to change into military uniform, as all civilian employees are expected to remain properly attired and groomed for the requirements of their position while in a duty status unless otherwise authorized by management.

Management argues that employees can simply use existing facilities to change in and out of uniform. Moreover, granting employees duty time to change for breaks would result in roughly 30 minutes of unproductive time per day.

C. Conclusion

¹⁴ This is another section where the Union's numbering differs.

The first issue – Union 4.3 and Agency 5.1 – concerns where employees will take their meal periods. The parties agree that employees may use Agency facilities, but the Union specifies that they should be “suitable, comfortable, and designated inside [an] area with suitable sanitation facilities.” When pressed on specifics during cross examination, however, the Union witnesses could not provide a clear picture on what the foregoing translated to in terms of actual facilities. Although one Union witnesses testified that eating meals in the work areas is problematic because of noise and filth, that same witness also testified that employees also ate in food courts and break rooms. It is not clear how either of these two latter options would differ from what the Union proposes. **Accordingly, I impose the Agency’s Section 5.1 to resolve this dispute.**

The second issue – Union 4.1 and Agency 5.2 – concerns whether employees will be granted “reasonable” time to change in and out of uniform attire before and after meal periods. The Union’s position focused largely on an argument that some employees believe it is unsafe to wear the uniform off base while obtaining lunch because at least one (1) other ART has been attacked in the past while they were in uniform. This argument strikes me as speculative because the circumstances behind this attack were entirely unclear and provide a very tenuous link between the Union’s argument and its proposal. **Accordingly, I will impose the Agency’s Section 5.2 to resolve this dispute.**

VI. Section 6 – Breaks

A. Union Position¹⁵

The Union offers the following:

4.2 A break period of 15 minutes will be provided for each four (4) hours of work to include overtime and are considered hours of duty. Employees may leave the work area in order to properly utilize a break.

4.3 Employees will be allowed to utilize a suitable, comfortable, and designated inside area with sanitation facilities during their rest breaks and lunch periods.

In its brief, the Union states there are not “large differences” between the parties. The Union again asks for a suitable rest area. Moreover, the Union’s proposal specifies that there will be a 15-minute break for every 4 hours worked in the event that an employee has to work 4 hours of overtime on a given 8-hour tour of duty.

¹⁵ This is another section where the Union’s numbering differs from the Section heading, but I will preserve the Union’s numbering.

B. Agency Position

The Agency offers the following:

6.1. Employees will be granted rest periods not to exceed 15 minutes during each half of the work shift. These rest periods will not be taken in conjunction with lunch periods or at the beginning or end of the work shift. Restroom breaks will not be considered a "Rest Period".

6.2. Employees are free to use existing facilities on a daily basis within their work areas during rest and meal breaks.

The Agency states both parties are in agreement to provide a 15-minute break every four (4) hours. As to rest areas, the Agency again argues that the Union could articulate a suitable definition that differs from what is already provided to employees.

C. Conclusion

I will impose the Union's 4.2 and the Agency's 6.2 to resolve this dispute. As to the break period issue, the parties are in agreement that each employee receives a 15-minute break per 4-hour period. The Union's proposal offers more specificity in that it clarifies this requirement also applies to any 4-hour periods worked on an overtime status. The Agency never offered an objection to this clarification, so I believe it is appropriate to include within the contract.

Regarding the rest area issue, once again the Union offered little explanation for what existing facilities need to be altered to address the Union's alleged concerns. So, I will again reject the Union's language on this topic.

VII. Section 7 – Benefits

A. Union Position¹⁶

The Union offers the following:

5.1 Clothing/uniform allowance will be provided for all ARTs who wear the US Service uniform while performing duties. The Agency will request and include all documentation for requirement for the

¹⁶ This is another section where Union numbering differs.

extensive and higher clothing allowance for all ARTs wearing the US Service uniform. The Agency will complete the required section that documents the nature of work making the wearing the uniform necessary. The Agency agrees to either of the following allowances:

\$2,155 annually to cover all uniform costs

\$1,851 annually, employer provides cold weather apparel

\$1,293 annually, employer provides cold weather apparel, gloves hat, belts and 2 pairs of boots (cannot be ill fitting or uncomfortable)

\$462 annually, for employee's decision of 2 pairs of boots annually (must meet proper uniform requirements). Employer provides all uniform clothing items (top, pants, socks, hat, belt, and undershirt), name/designator tapes, cold weather apparel (Gortex, Apex, fleece jacket, fleece beanie cap, insulated bottoms, insulated top), gloves and patches.

5.2 Safety toe footwear that is required for certain work environments shall be purchased through a distributor mutually acceptable to Organizational Commanders or designee and the Union. Employees may select from the distributors available shoes which meet proper safety standards and comfort needs. The Employee selection on the installation may be made on duty time; if selection off the installation occurs, duty time will not exceed two hours in length. If both pairs of protective footwear becomes unserviceable within the employees annual timeline, the Employer will provide an extra allowance of \$231.00.

5.3 Employees with special footwear needs will be accommodated when they provide acceptable medical documentation.

5.5 When a specific haircut standard is required (excluding a non-regulatory but neat appearance) haircut allowance will be paid to the employee of \$15 for each pay period to allow for a haircut every pay period. No reprisals will be done against the employee if a satisfactory haircut was accomplished during each pay period. If such a haircut standard is enforced, the employee will accomplish this requirement during duty time.

5.6 When personal grooming standards that involve a shaved face are daily mandated (mustaches are allowed), an allowance of \$20 per pay

period will be paid by the Agency to ensure hygienic safety and standards are met for employees. If a face shaving standard is enforced, the employee will accomplish this requirement during duty time.

5.7 ARTs will be encouraged to participate in the Health and Wellness Program. Participation in the program requires a written agreement between both the supervisor and employee. Employees may be granted administrative leave for up to 3 hours weekly to participate in physical activities during their duty day. Fitness time may be approved in conjunction with lunch periods. Coordination of time off for physical activity will be based on mission and workload requirements, as well as supervisor approval. While engaging in the physical fitness program, no special clothing will be required. However, suitable athletic clothing will be in good taste and will not detract from the image of the organization.

The Union requests various financial allowances for uniform pieces and grooming. The Union estimates that each uniform breaks down financially to \$1,600 per set, and the Union is also aware of 37 bargaining unit ART's who need uniform items but will not pursue grievances out of a fear of reprisal. So, the Union proposes financial allowances in order to ensure that employees can obtain the items they need on their own and not have to worry about reprisal or uniform related discipline. Similarly, the Union proposes grooming allowances in order to ensure that ART's can get uniform appropriate haircuts and also shave as needed.

At the hearing, the Agency offered testimony that the Union's proposals would be inconsistent with various Federal appropriation laws. The Union maintains it is inappropriate for the Agency to hide behind laws as it was the Air Force, and the Agency, who insisted on imposing these uniform requirements upon the ART's. The Union feels there is no need for the uniforms to begin with, so it finds the Agency's reliance upon a legal framework to be disingenuous.

Another issue is duty time for physical fitness. The current practice for employees is to receive up to three (3) duty hours per week and the Union believes that the Agency has not demonstrated why this practice should change. The Union notes that, at the hearing, the Agency offered only a "strained" interpretation of "possible future governing law" to support its position to reduce the existing amount.¹⁷ But, the Union believes this argument is not sufficient to overturn existing practice.

B. Agency Position

¹⁷ Union Brief at 6.

The Agency offers the following:

- 7.2. The employer will issue military uniforms and items consistent with regulatory requirements, to include in-kind replacement.
- 7.7. The Employer will not provide funding for haircuts.
- 7.8. The Employer will not provide funding for personal grooming accessories.
- 7.9. No special clothing will be required for the physical fitness program. However, suitable athletic clothing will be in good taste and will not detract from the image of the organization.
- 7.10. (14) Employees may be granted administrative leave for up to 1.5 hours weekly to participate in physical fitness activities during their duty day, mission permitting.

The Agency opposes the Union's various requests for allowances. At the hearing, the Agency's LR witness offered testimony that the Union's proposals would place the Agency in danger of violating various Federal laws. However, in its brief the Agency shifted its focus to the financial costs that the Union's proposal would have upon the Agency. The military's Reserve Personal Account addresses "like kind" exchanges for uniforms and uniform items throughout the military, and ART's throughout the country have used this process for replacement uniforms since the uniform rule was enacted. ART's are issued four (4) standard sets of uniforms. Indeed, the Agency notes that one of the Union witnesses testified that they received the same number over the course of the three (3) years; according to the Agency, this demonstrates that the witness had no issue with obtaining appropriate uniforms.¹⁸

The Agency claims that the amount of money requested by the Union would total \$2,000 per employee, and that this figure would translate to eight (8) uniforms per employee. This number is twice the number of uniforms that active duty personnel receive. Employees are eligible to go through the "like kind" process and are encouraged to wear overalls over their uniform in order to ensure upkeep. This approach is similar to one imposed in a prior FSIP Arbitration decision.¹⁹ As for grooming costs, the Agency claims that the Air Force has "never" paid for these items.

The Agency also proposes reducing duty time for fitness from three (3) hours per week to up to 1.5 hours per week, or a 50% reduction. The Agency argues that

¹⁸ Agency Brief at 10.

¹⁹ *Id.* at 9 (*Lackland, AFB and AFGE, Local 1367, 12 FSIP 057 (Lackland, AFB)*).

employees can simply show up in proper attire on their own and that the Panel imposed an identical proposal in a different case.²⁰

C. Conclusion

I will impose a compromise proposal to resolve the dispute over this Section. In this regard, **I will: (1) impose the Agency's language for uniform items and costs, Agency Sections 7.2, 7.7, 7.8, and 7.9; and (2) impose the Union's language for work out duty time, Union Section 5.7.**

Much of the parties' presentations concerning uniform items and allowances turned on costs; costs to the employees *and* the Agency. It is clear that, regardless of which way I rule, one party will bear more financial burden than the other. Upon balancing all appropriate interests, I believe that the Agency's concerns carry more relative gravity.

The several hundred ART's who are a part of Barksdale AFB do not operate within a vacuum. Rather, they are part of a larger workforce of over 8,500 ART's nationwide. A splash in the Barksdale lake could trigger a wave in the ART ocean. In this regard, evidence tended to demonstrate that funding for uniform issuance and replacement does not exist as a standalone budgetary item specific to Barksdale AFB; rather, they fall within a larger budget for *all* ART's. I must be cognizant of this fact as I evaluate whether to provide the Union with a greater financial windfall that operates independently from the rest of the ART workforce. Arbitrator Ed Hartfield grappled with a similar issue in his award in *Lackland AFB* where the ART's in that dispute asked for additional uniform items on top of what was provided to them. Ultimately, Arbitrator Hartfield rejected this position because of, among other reasons, the costs associated with that approach. Panel decisions and awards are not binding upon subsequent Panels. But, I find the rationale of Arbitrator Hartsfield to be persuasive when coupled with the argument presented by the Agency in this dispute. Therefore, I am inclined to accept the Agency's position overall.

In reaching the foregoing conclusion, I do not mean to diminish the employees' concerns. The Union presented credible evidence that the Agency and/or Air Force has not done an adequate job of timely responding to some requests for uniform items. In light of that I would encourage the parties, particularly the Agency, to engage in a regular meaningful dialogue about this topic, perhaps as part of a labor forum or committee. Moreover, as I have noted elsewhere in this opinion, the employees may turn to the grievance process if they have individualized concerns.

²⁰ *Id.* at 10 (citing *Seymour Johnson, AFB and NAIL, Local No. 7, 19 FSIP 028 (2019)(Seymour AFB)*).

Regarding workout time, I find the Union's proposal and position to be more persuasive. There is no dispute that the status quo is that employees are eligible for up to three (3) hours per week. At the hearing, the Agency offered a legal argument as to why this figure needed to be reduced but it seemingly abandoned that position in its post-hearing brief.²¹ Instead, it focuses on a prior Panel decision that imposed a 1.5-hour ceiling, i.e., *Seymour AFB*. As I stated previously, prior Panel decisions are not binding precedent, so I would need something more than a simple citation to a prior decision as a basis for adopting the Agency's position. The Agency has not done this. In light of that, I must reject the Agency's proposal and will impose the Union's language.

Based on all of the foregoing, **I impose the Agency's Section 7.2, 7.7, 7.8, 7.9 and the Union's Section 5.7 to resolve the dispute over Section 7.**

VIII. Section 8 – Personal Protective Equipment

This Section concerns the Agency's responsibility to provide personal protective equipment (PPE) to employees. The Agency agrees it must do so, however, the parties disagree over some aspects of that duty.

A. Union Position

The Union offers the following:

6.1 The Employer will provide ARTs all equipment and safety items required to complete assigned tasks.

6.2 Employees who are required to work in occupations designated by the agency which have eye hazards such as flying objects, dust, chemicals, compressed air, welding operations, spraying operations etc. shall be provided safety protection eyewear at no cost to the Employee. If the Employer requires the use of eye protection in the performance of the Employee's assigned duties and the Employee normally wears corrective lenses, the Supervisor will excuse the Employee for up to two hours of duty time to obtain an eye examination. Employees providing an existing prescription to their Supervisor that is less than two years old will be provided prescription safety glasses if requested. Employees who normally wear corrective lenses and are required to wear full face masks, hoods, or a self-contained breathing apparatus in the performance of their assigned duties shall be provided prescription inserts.

²¹ "The Agency hereby submits its post-hearing brief for the Agency's proposals and notes *all proposals* are bargainable." Agency Brief at 1 (emphasis added).

6.3 The Employer may consider the employee's request for alternative options for PPE. PPE must be authorized and meet criteria and requirements as described in governing regulations.

B. Agency Position

The Agency offers the following:

8.1. Protective clothing/equipment is necessary for performing certain assigned duties and will be furnished by the Employer in accordance with applicable safety standards and regulations. Employees will not be required to perform tasks requiring protective equipment until the equipment has been provided. Protective clothing/equipment includes but is not limited to: safety shoes, rubber boots, earplugs, dust masks, safety aprons, protective gloves, and safety glasses. All safety-related equipment to include clothing must be associated with a particular trade, skill or occupation and will be supplied where authorized by current directives. For Employees that wear prescription lenses, eye protection that can be worn over the prescription lenses must not interfere with the wearer's vision or proper position of the protective equipment. When an Employee requires prescription safety glasses to protect from or prevent hazards, the Employee must provide a valid prescription to the Employer. Absent budgetary constraints, the Employer may consider the employee's request for alternative options for Personal Protective Equipment (PPE). PPE must be authorized and meet criteria and requirements as described in governing regulations. All issued protective equipment will be replaced as determined necessary. The proper care and use of protective clothing/equipment shall be the responsibility of the Employee.

C. Conclusion

I will impose a modified version of the parties' proposals to resolve this dispute because, although the parties offered differing language, the competing language is largely similar. There appear to be only two (2) key differences.

The first difference is how to address an employee's request for alternative types of PPE. The Agency proposes that supervisors will consider budgetary restrictions, and the Union's language omits this requirement. I believe it is sensible to retain the Agency's language because, in that scenario, the Agency has already offered to provide PPE but is now being asked to provide different equipment altogether on an individual basis. In such circumstances, I believe it is appropriate for a supervisor to consider various factors – such as cost – when

assessing whether they should purchase a different type of PPE for an employee than what is otherwise available. Therefore, I will leave that language unaltered.

I will, however, impose some of the Union's language concerning eyewear. Eyewear, particularly for employees who need it to see, is a pivotal piece of equipment. Testimony was offered that employees often have to work around hazardous flight equipment that could endanger the health and safety of their eyes. The Agency acknowledges this importance by identifying eyewear as a specific piece of equipment to be procured, but it disagrees with the Union's request to grant employees duty time of two (2) hours to obtain a prescription for proper lenses. Given how pivotal this particular piece of equipment is, I think it is only appropriate to grant employees the ability to take steps to obtain them on duty time. Moreover, the Union's requested amount of time appears reasonable. **Accordingly, I will impose the following modification in the Agency's Section 8.1 (modification in bold):**

8.1. Protective clothing/equipment is necessary for performing certain assigned duties and will be furnished by the Employer in accordance with applicable safety standards and regulations. Employees will not be required to perform tasks requiring protective equipment until the equipment has been provided. Protective clothing/equipment includes but is not limited to: safety shoes, rubber boots, earplugs, dust masks, safety aprons, protective gloves, and safety glasses. All safety-related equipment to include clothing must be associated with a particular trade, skill or occupation and will be supplied where authorized by current directives. For Employees that wear prescription lenses, eye protection that can be worn over the prescription lenses must not interfere with the wearer's vision or proper position of the protective equipment. When an Employee requires prescription safety glasses to protect from or prevent hazards, the Employee must provide a valid prescription to the Employer **and the Employer will provide this equipment. If the Employer requires the use of eye protection in the performance of the Employee's assigned duties and the Employee normally wears corrective lenses, the Supervisor will excuse the Employee for up to two (2) hours of duty time to obtain an eye examination.** Absent budgetary constraints, the Employer may consider the employee's request for alternative options for Personal Protective Equipment (PPE). PPE must be authorized and meet criteria and requirements as described in governing regulations. All issued protective equipment will be replaced as determined necessary. The proper care and use of protective clothing/equipment shall be the responsibility of the Employee.

ORDER

This matter is resolved as described in the above Opinion.

Jeanne Charles
s/Jeanne Charles
FSIP Member

May 24, 2022