

63 FLRA No. 170

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES
LOCAL 1869
(Union)

and

UNITED STATES DEPARTMENT OF THE AIR
FORCE

315TH AIRLIFT WING

CHARLESTON AIR FORCE BASE, SOUTH CARO-
LINA

(Agency)

0-NG-2992

DECISION AND ORDER ON NEGOTIABILITY
ISSUES

August 7, 2009

Before the Authority: Carol Waller Pope, Chairman and
Thomas M. Beck, Member

I. Statement of the Case

This case 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 concerning the type of uniform an Air Reserve Technician Dual Status Civilian Employee (ART) should wear when performing civilian status work.¹ 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 Agency's duty to bargain. Accordingly, we dismiss the petition for review.

1. In its petition for review, the Union requested that the Authority consider the negotiability of both Proposal 10 and Proposal 38. In its reply to the Agency's SOP, the Union "recognize[d] that [P]roposal 38 is not negotiable because it is not directly related to a condition of employment" and stated that it was withdrawing Proposal 38. Response to SOP at 1. Accordingly, we do not address Proposal 38 here.

II. Background

In response to an Agency decision to have the ARTs wear their military uniforms while working in a civilian capacity, the Union proposed to the Agency that the ARTs be permitted to wear transient alert uniforms instead of the standard military uniform.² Petition at 3. The Agency stated that it would not bargain over creating uniform deviations as the Union's proposal was contrary to management rights under § 7106(b)(1) of the Statute. *Id.*

III. Proposal³

AFGE Local 1869 proposes a civilian uniform for the Air Reserve Technician Dual Status Civilian Employees such as transient alert instead of the military uniform, which would alleviate some of the rank issues and the problem of keeping good order and military discipline that this decision has brought about.

Petition at 7; SOP at 1.

IV. Meaning of the Proposal

The parties agreed that the proposal would permit a dual status ART, when working in a civilian capacity, to wear a transient alert uniform rather than a battle dress military uniform. Record of Post-Petition Conference at 2. The Union asserts that the phrase "alleviate some of the rank issues," was included to refer to issues that could arise from ARTs wearing uniforms with rank insignia while in a civilian capacity, causing confusion among employees because "military culture individuals are taught that higher ranks take precedence over lower ranks." *Id.* at 2.

V. Positions of the Parties**A. Agency**

The Agency asserts that the proposal affects management's right to determine the methods and means of

2. A transient alert uniform consists of coveralls, or dark blue pants and shirts, or other type of uniform without military rank insignia attached. A battle dress uniform or standard military uniform consists of a camouflaged patterned uniform with rank insignia attached. The rank insignia are not attached to the uniforms when purchased and must be purchased separately and attached to the uniform. Petition at 2.

3. The Post-Petition Conference summary refers to page 7 of the Petition, which provides three versions of the proposal. The first version listed on page 7 is also the version referenced in the Agency's allegation of non-negotiability and the Agency's SOP. As the Union does not set forth the language of Proposal 10 in its response to the SOP and the Union does not object to the version outlined by the Agency in its SOP, we address the negotiability of that version of the proposal.

performing work, thereby rendering it nonnegotiable. SOP at 1. The Agency argues that the methods and means of performing work can only be negotiated at the election of the Agency. *Id.* at 2. The Agency alleges that the Authority has previously found that this type of proposal -- requiring ARTs to wear a military uniform during civilian duty -- directly interferes with management's right to determine the methods and means of performing work. *Id.* (citations omitted). The Agency states that the purpose of requiring ARTs to wear the uniform is 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" *Id.* at 4 (citation omitted). The Agency further argues that the furtherance of such purpose is integral to the mission of the Agency. *Id.* at 4.

Further, the Agency argues that the proposal does not constitute an appropriate arrangement or procedure. *Id.* at 2. The Agency asserts that the proposal is not an appropriate arrangement under 5 U.S.C. § 7106(b)(3) as it excessively interferes with its management rights. *Id.* at 6. The Agency asserts that allowing ARTs to wear a uniform without rank would directly interfere with the Agency's right to determine the methods and means of performing work and therefore cannot constitute an appropriate arrangement. *Id.* at 5-6 (citing 5 U.S.C. § 7106(b)(3); *NAGE, Local R14-87*, 21 FLRA 24, 25 (1986)). The Agency also alleges that the proposal is seeking a deviation from military dress uniform for ARTs working in civilian status, and, as such, that the proposal is nonnegotiable because it does not constitute a negotiable procedure under § 7106(b)(2) of the Statute. *Id.* at 4.

B. Union

The Union argues that Proposal 10 does not directly interfere with management's right to determine the method and means of performing work because the uniform worn by the ARTs does not impact the working conditions of the ARTs. Response at 1, 4. The Union asserts that it is not asking the Agency to refrain from changing the ARTs uniforms; instead, the Union contends that it has the right to negotiate over the type and style of uniform worn by the ARTs when performing civilian duties. *Id.* at 2. The Union also notes that "it is [m]anagement[']s right to require the civilian employees . . . to wear a uniform for work purposes." *Id.* According to the Union, forcing the ARTs to wear uniforms with rank insignia would "force the ARTs to follow military customs and courtesies[, s]omething they are not required to do during the course of their normal work days as civilians." *Id.* at 3.

VI. Analysis and Conclusions

The Authority has previously held that "the requirement that civilian technicians wear the military uniform is a method and means of performing work within the meaning of [§] 7106(b)(1) of the Statute." *Ass'n of Civilian Technicians, Wis. Chapter*, 26 FLRA 682, 686-87 (1987) (citation omitted) (*ACT Wisconsin*); *see also Ass'n of Civilian Technicians*, 38 FLRA 1005, 1012 (1990) (*ACT*). It is well established that proposals or provisions that restrict an agency's authority to determine the methods and means of performing work affect the exercise of this management right. *See, e.g., ACT*, 38 FLRA at 1012-13 (proposal that would allow employees to deviate from specified components of the military uniform prescribed by the agency found to directly interfere with the agency's right to determine the methods and means of performing work); *ACT, Wisconsin*, 26 FLRA at 686-87 (in view of the relationship between the military nature of the uniform and the purpose for which the uniform requirement was adopted, proposal allowing employees to elect to wear a nonmilitary uniform would negate agency's right to determine the methods and means of performing work).

Here, the proposal would allow employees to deviate from the Agency's prescribed military uniform for the ARTs, and, as such, affects the Agency's right to determine the methods and means of performing work. *See ACT*, 38 FLRA at 1012-13; *ACT Wisconsin*, 26 FLRA at 686-87. The Union does not assert that the proposal is encompassed by any of the exceptions to management rights set forth in § 7106(b) of the Statute. That is, the Union does not argue either that the proposal is an appropriate arrangement or a procedure. Accordingly, as the Agency has not elected to bargain over the proposal, we find that the proposal is outside the duty to bargain.

VII. Order

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