

ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 12, 2000

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 99-1476

**ASSOCIATION OF CIVILIAN TECHNICIANS,
SCHENECTADY CHAPTER,
Petitioner**

v.

**FEDERAL LABOR RELATIONS AUTHORITY,
Respondent**

**ON PETITION FOR REVIEW OF A DECISION AND ORDER
OF THE FEDERAL LABOR RELATIONS AUTHORITY**

BRIEF FOR THE FEDERAL LABOR RELATIONS AUTHORITY

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ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 12, 2000

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

A. Parties and Amici

Appearing below in the administrative proceeding before the Federal Labor Relations Authority (Authority) were the Association of Civilian Technicians, Schenectady Chapter (union) and the U.S. Department of Defense, National Guard Bureau, New York Air National Guard, Latham, New York (agency). The union is the petitioner in this court proceeding; the Authority is the respondent.

B. Ruling Under Review

The ruling under review in this case is the Authority's Decision and Order on Negotiability Issues in the *Association of Civilian Technicians, Schenectady Chapter and U.S. Department of Defense, National Guard Bureau, New York Air National Guard, Latham, New York*, Case No. 0-NG-2375, issued on September 30, 1999. The Authority's decision is reported at 55 FLRA (No. 153) 925.

C. Related Cases

This case has not previously been before this Court or any other court. Counsel for the Authority is unaware of any cases pending before this Court which are related to this case within the meaning of Local Rule 28(a)(1)(C).

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GLOSSARY

The 109 th	109 th Tactical Airlift Wing
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The Guard	New York Air National Guard
Statute	Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (1994 & Supp. III 1997)
Union	Association of Civilian Technicians, Schenectady Chapter

□ □. 99-1476

1

The diagram consists of a horizontal row of 40 vertical bars. Each bar has a thin black outline and a light gray fill. The heights of the bars fluctuate in a regular, periodic pattern, creating a visual representation of a digital signal or a waveform.

STATEMENT OF JURISDICTION

¹ Pertinent statutory provisions are set forth in the attached Addendum to this brief.

STATEMENT OF THE ISSUE

STATEMENT OF THE CASE

STATEMENT OF THE FACTS

A. The National Guard and Dual-Status Technicians

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B. Background

କାର୍ଯ୍ୟ, ଏହି ପରିମାଣରେ ଉପରେ ଏହା କାହାରେ କାହାରେ
ନିର୍ଦ୍ଦେଖିଲାମୁଣ୍ଡିତ. ଏହା ନିର୍ଦ୍ଦେଖିଲାମ୍ବାକାରୀ କାହାରେ
କାହାରେ. ଏହା କାହାରେ ନିର୍ଦ୍ଦେଖିଲାମ୍ବାକାରୀ – ଏହା କାହାରେ କାହାରେ
କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ – ଏହାରେ, ଏହାରେ, ଏହା
କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ, ଏହା କାହାରେ କାହାରେ
କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ, ଏହା କାହାରେ, ଏହା କାହାରେ କାହାରେ,
ଏହା କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ
କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ
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କାହାରେ.

ପାଠ. 18-19.

ଏହା ଏହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ, ଏହାରେ କାହାରେ କାହାରେ
କାହାରେ କାହାରେ କାହାରେ 10 ଫେବ୍ରୁଆରୀ 1976, ଏହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ
କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ. ପାଠ. 19. ଏହା
ଏହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ.

C. The Authority's Decision

ଏହା ଏହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ
କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ 2² ଏହାରେ କାହାରେ କାହାରେ,
କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ, ଏହାରେ କାହାରେ କାହାରେ
କାହାରେ କାହାରେ କାହାରେ. ଏହାରେ କାହାରେ କାହାରେ କାହାରେ କାହାରେ, ଏହାରେ

² Member Wasserman dissented, finding that the proposal did not concern the military aspects of technician employment. App. 27-29.

³ As the union points out (Brief (Br.) at 8), subsequent to the issuance of this decision, the Authority clarified the rationales supporting the determination that military matters are not within the duty to bargain, explaining that this determination is not compelled by the Statute's definition of "conditions of employment." *Association of Civilian Techs., Tex. Lone Star Chapter 100 & U.S. Dep't of Defense, Nat'l Guard Bureau, State of Tex., Adjutant General's Dep't and Ass'n of Civilian Tech., ATC, Wisc.* 26 and *U.S. Dep't of Defense, Nat'l Guard Bureau, Dep't of Mil. Affairs, State of Wisc.*, 55 FLRA 1226 (2000) (a copy of this decision is in the Appendix at 51-62), *petition for reconsideration denied*, 56 FLRA No. 63 (June 7, 2000) and *petition for review filed*, No. 00-1085 (D.C. Cir. Mar. 13, 2000). As a result, for purposes of the instant litigation, the Authority relies only on the 10 U.S.C. § 976 basis for the principle that technicians may not bargain over the military aspects of their employment.

STANDARD OF REVIEW

Local 2343 v. FLRA, 144 F.3d 85, 88 (D.C. Cir. 1998). The court held that the agency's interpretation of the term "negotiable subject matter" was reasonable. See 5 U.S.C. § 7123(f), 5 U.S.C. § 706(2)(E); *Overseas Educ. Ass'n, Inc. v. FLRA*, 858 F.2d 769, 771-72 (D.C. Cir. 1988).

Library of Congress v. FLRA, 699 F.2d 1280, 1289 (D.C. Cir. 1983). The court held that the agency's interpretation of the term "negotiable" was reasonable, noting that the term "generally refers to subjects which are amenable to collective bargaining." Overseas Educ. Ass'n v. FLRA, 827

1.2] 814, 816 (D.C. Cir. 1987) (*Department of Defense v. FLRA*, 659 F.2d 1140, 1162 F.2d 121 (D.C. Cir. 1981)). 1.2] 814, 816 (D.C. Cir. 1987) (*National Treasury Employees Union v. FLRA*, 30 F.3d 1510, 1514 (D.C. Cir. 1994)).

1.2] 814, 816 (D.C. Cir. 1987) (*National Treasury Employees Union v. FLRA*, 30 F.3d 1510, 1514 (D.C. Cir. 1994)). 1.2] 814, 816 (D.C. Cir. 1987) (*Department of the Treasury v. FLRA*, 837 F.2d 1163, 1167 (D.C. Cir. 1988)).

SUMMARY OF ARGUMENT

1.2] 814, 816 (D.C. Cir. 1987) (*National Treasury Employees Union v. FLRA*, 30 F.3d 1510, 1514 (D.C. Cir. 1994)). 1.2] 814, 816 (D.C. Cir. 1987) (*Department of the Treasury v. FLRA*, 837 F.2d 1163, 1167 (D.C. Cir. 1988)).

1.2] 814, 816 (D.C. Cir. 1987) (*National Treasury Employees Union v. FLRA*, 30 F.3d 1510, 1514 (D.C. Cir. 1994)). 1.2] 814, 816 (D.C. Cir. 1987) (*Department of the Treasury v. FLRA*, 837 F.2d 1163, 1167 (D.C. Cir. 1988)).

1.2] 814, 816 (D.C. Cir. 1987) (*National Treasury Employees Union v. FLRA*, 30 F.3d 1510, 1514 (D.C. Cir. 1994)). 1.2] 814, 816 (D.C. Cir. 1987) (*Department of the Treasury v. FLRA*, 837 F.2d 1163, 1167 (D.C. Cir. 1988)).

ARGUMENT

THE AUTHORITY PROPERLY DETERMINED THAT THE PROPOSAL IS OUTSIDE THE GUARD'S DUTY TO BARGAIN BECAUSE IT RESTRICTS THE GUARD'S STAFFING OF A MILITARY MISSION AND THEREFORE CONCERNS THE MILITARY ASPECTS OF TECHNICIAN EMPLOYMENT

1988),¹ the FLRA has held that the agency's failure to provide the parties with a copy of the proposed arbitration agreement before the hearing violates the Act.² The FLRA has also held that the agency's failure to provide the parties with a copy of the proposed arbitration agreement before the hearing violates the Act.³ See *National Fed'n of Fed. Employees, Local 1623 v. FLRA*, 852 F.2d 1349, 1350-51 (D.C. Cir. 1988). The FLRA has held that the agency's failure to provide the parties with a copy of the proposed arbitration agreement before the hearing violates the Act.⁴ Id. at 1351. The FLRA has held that the agency's failure to provide the parties with a copy of the proposed arbitration agreement before the hearing violates the Act.⁵ Id. at 1353.

Arkansas National Guard, 188th Fighter Wing, Fort Smith, Ark., 55 F.3d 63, 65 (1999) (*FLRA v. Arkansas Nat'l Guard*), *enf'd sub nom. FLRA v. Arkansas Nat'l Guard*, 14 F.3d 14 (8th Cir. 1999) (No. 99-1974); see also

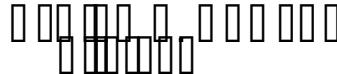
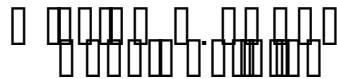
и т. д. Важно отметить, что в первом изложении теории Кантора, в частности, в работе [1], в которой он определяет бесконечные множества как «множества, имеющие одинаковую способность к взаимодействию с конечными множествами», не было сформулировано определение конечного множества. В дальнейшем Кантор определил конечное множество как «множество, которое можно отобразить на конечное множество». Важно отметить, что в первом изложении теории Кантора, в частности, в работе [1], в которой он определяет бесконечные множества как «множества, имеющие одинаковую способность к взаимодействию с конечными множествами», не было сформулировано определение конечного множества. В дальнейшем Кантор определил конечное множество как «множество, которое можно отобразить на конечное множество».

Одним из первых в Китае был создан национальный парк «Хуаншань» («Желтые горы») – это один из самых старых и известных парков Китая. В 1990 году он был включен в список всемирного наследия ЮНЕСКО. В 2007 году парк «Хуаншань» был признан лучшим национальным парком Китая. В 2010 году парк «Хуаншань» был признан лучшим национальным парком Китая.

Любимые, любимые члены общества, любите и берегите стариков (Илл. 24 л. 10).

CONCLUSION

『中華人民共和國憲法』，由全國人民代表大會於1982年12月4日通過。



607 14 . . . 20424
(202) 482-6620

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13, 2000

**CERTIFICATION PURSUANT TO FRAP RULE 32
AND CIRCUIT RULE 28**

32, 28,
14-
2,969.

13, 2000

SERVICE LIST

I certify that copies of the Brief For The Federal Labor Relations Authority have been served this day, by mail, upon the following:

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June 13, 1999

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5. 5 U.S.C. § 6323(d)	A-6
6. 10 U.S.C. § 976.....	A-7
7. 10 U.S.C. § 12315.....	A-10
8. 32 U.S.C. § 709	A-11

§ 7105. Powers and duties of the Authority

(a) (2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

* * * * * * * * * * * * *
(E) resolve issues relating to the duty to bargain in good faith under section 7117(c) of this title;

* * * * * * * * * * * *

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

* * * * *

(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

- (A) filing a petition with the Authority; and
- (B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

- (A) file with the Authority a statement—
 - (i) withdrawing the allegation; or
 - (ii) setting forth in full its reasons supporting the allegation; and
- (B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

* * * * *

§ 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under—

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination), may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

* * * * *

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

* * * * *

Sec. 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall -

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(2) hold unlawful and set aside agency action, findings, and conclusions found to be -

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

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§ 6323. Military leave; Reserves and National Guardsmen

§ 976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) The term "member of the armed forces" means (A) a member of the armed forces who is serving on active duty, (B) a member of the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing inactive-duty training.

(2) The term "military labor organization" means any organization that engages in or attempts to engage in -

(A) negotiating or bargaining with any civilian officer or employee, or with any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces;

(B) representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(C) striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to -

(i) negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(3) The term "civilian officer or employee" means an employee, as such term is defined in section 2105 of title 5.

(b) It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization -

(1) to join or maintain membership in such organization; or

(2) to attempt to enroll any other member of the armed forces as a member of such organization.

(c) It shall be unlawful for any person -

(1) to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or

(2) to negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members;

(3) to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to -

(A) negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces,

(B) recognize any military labor organization as a representative of individual members of the armed forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or

(C) make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or

(4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d).

(d) It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces.

(e) No member of the armed forces, and no civilian officer or employee, may -

(1) negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or

(2) permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d).

Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(f) Whoever violates subsection (b), (c), or (d) shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than \$25,000.

(g) Nothing in this section shall limit the right of any member of the armed forces -

(1) to join or maintain membership in any organization or association not constituting a "military labor organization" as defined in subsection (a)(2) of this section;

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

§ 12315. Reserves: duty with or without pay

- (a) Subject to other provisions of this title, any Reserve may be ordered to active duty or other duty -
- (1) with the pay and allowances provided by law; or
 - (2) with his consent, without pay. Duty without pay shall be considered for all purposes as if it were duty with pay.
- (b) A Reserve who is kept on active duty after his term of service expires is entitled to pay and allowances while on that duty, except as they may be forfeited under the approved sentence of a court-martial or by non-judicial punishment by a commanding officer or when he is otherwise in a non-pay status.

§ 709. Technicians: employment, use, status

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsection (b) of this section persons may be employed as technicians in -

(1) the administration and training of the National Guard; and (2) the maintenance and repair of supplies issued to the National Guard or the armed forces.

(b) A technician employed under subsection (a) shall, while so employed -

(1) be a member of the National Guard;

(2) hold the military grade specified by the Secretary concerned for that position; and

(3) wear the uniform appropriate for the member's grade and component of the armed forces while performing duties as a technician.

(c) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title, to employ and administer the technicians authorized by this section.

(d) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed therein is required under subsection (b) to be a member of the National Guard.

(e) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned -

(1) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who is separated from the National Guard or ceases to hold the military grade specified for his position by the Secretary concerned shall be promptly separated from his technician employment by the adjutant general of the jurisdiction concerned;

(2) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who fails to meet the military security standards established by the Secretary concerned for a member of a reserve component of the armed force under his jurisdiction may be separated from his employment as a technician and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(3) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(4) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned:

Jurisdiction concerned,
(5) (6) (1) (2)
(3), (4),
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(f) Sections 2108, 3502, 7511, and 7512^[1] of title 5 do not apply to any person employed under this section. See References in Text note below.

(g)(1) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, in the case of technicians assigned to perform operational duties at air defense sites -

- (A) prescribe the hours of duties;
- (B) fix the rates of basic compensation; and
- (C) fix the rates of additional compensation;

to reflect unusual tours of duty, irregular additional duty, and work on days that are ordinarily nonworkdays. Additional compensation under this subsection may be fixed on an annual basis and is determined as an appropriate percentage, not in excess of 12 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 of the General Schedule under section 5332 of title 5.

(2) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, for technicians other than those described in paragraph (1), prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(h) Repealed. Pub. L. 103-160, div. A, title V, Sec. 524(d), Nov. 30, 1993, 107 Stat. 1657.)

(i) The Secretary concerned may not prescribe for purposes of eligibility for Federal recognition under section 301 of this title a qualification applicable to technicians employed under subsection (a) that is not applicable pursuant to that section to the other members of the National Guard in the same grade, branch, position, and type of unit or organization involved.

