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DUTY ● DIGNITY ● DEDICATION





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THE MORE YOU KNOW

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Dear Members,

Another Christmas/Holiday Season is upon us once again. As we look forward to all the festivities, spending time with our loved ones is a priority. Let us keep in our thoughts all those who are unable to be with their loved ones this year whether it is due to deployments, illnesses, or duty commitments. Reach out to a fellow member that you may not have seen in some time. That one call or visit may just be enough to raise their spirits this holiday season.

As we do every year, we listen to our members and based on our membership needs we draft our legislative packets which your state and territory's delegates take to the Hill to advocate on your behalf. We have an awesome team that advocates for you, our members, all year. That team consists of your Chapter Officers & Stewards, ACT National Field Reps, ACT National Board and ACT Attorneys. We can't forget Terry and Deanna who is still on our team advocating for ACT after all these years. I just want say "Thank You" to the entire team.

As this year ends, I want to wish you and your families a very Merry Christmas/Feliz Navidad. May your New Year be prosperous, joyous, peaceful and above all amazing!

Keep The Faith,

Felicia Neale

President

Association of Civilian Technicians

03 THE TECHNICIAN





Please see below for Rally 2024 Hotel Room reservations:

- **Call the reservations center at (800) 362-2779**
or

- **Book online via the hotel's website:**

<https://www.hilton.com/en/hotels/wasotes-embassy-suites-alexandria-old-town/>

GOVERNMENT SHUTDOWN AVERTED POSSIBLE TAG CRIMES, TOO

DANIEL SCHEMBER

The late September congressional action that temporarily funded the federal government through the first several weeks of 2024 averted not only an October 1 government shutdown—which would have required furlough of the vast majority of federal employees—but also possible crimes by Adjutants General.

Despite clear Department of Defense guidance provided in August—guidance stating the few circumstances in which, during a lapse in government funding, Guard employees are excepted from furlough, and also requiring determination of furlough exceptions on a position-by-position basis—the HRO in one state informed ACT on September 20 that “the Adjutant General has determined that all federal employees will be excepted from furlough. . . . TAG has determined that our missions are excepted activities.”

Requiring or even allowing an employee to work during a lapse in funding, if the employee must be furloughed, is a violation of the Anti-Deficiency Act—which prohibits government expenditures not authorized by Congress. A knowing and willful violation of the Act, moreover, is a criminal offense for which jail time can be ordered.

ACT grieved the AG pronouncement “that all federal employees will be excepted from furlough”—and also asked the National Guard Bureau to advise the Adjutant General of the precarious path TAG was pursuing.



GOVERNMENT SHUTDOWN AVERTED POSSIBLE TAG CRIMES, TOO CONT.

DANIEL
SCHEMPER

Any intra-Guard management communications on the matter are unknown to ACT; and because Congress temporarily averted a shutdown, TAG's possible action, had a shutdown occurred on October 1, also is unknown.

But one point is clear. The ACT grievance and communication to NGB reduced the ability of TAG to claim that any violation that TAG might have committed was not knowing and willful—and therefore merely a civil violation, not a crime. The ACT grievance and communication to NGB clearly laid out the law.

Ironically, the Guard claimed the ACT grievance was not proper because the Guard had not yet ordered employees to do anything—namely, work after a funding lapse—that might be unlawful. ACT responded to this, saying that, under the statutory definition of “grievance,” a grievance properly may challenge an announced agency interpretation of law before it has been implemented.

It can properly be suggested that, instead of rejecting the ACT grievance on an erroneous ground, the Guard might more reasonably have been grateful that ACT's timely explanation of the law helped prevent the possibility of TAG being “perp-walked” into a federal district court in a prison jumpsuit, handcuffs, and leg chain.

This matter is not over. The government only temporarily has been funded, and a shutdown in early 2024 is not impossible. More than one Adjutant General erroneously has asserted that all National Guard employees, during a lapse of funding, are excepted from furlough.

In these circumstances, ACT needs to learn the State Guards' views on the question and, if necessary, educate them. If their pronouncements of their views are incorrect, ACT should grieve them.

LEGISLATION UPDATE

LES HACKETT/ ACT LEGISLATIVE DIRECTOR

In January 2024 the legislative calendar will reset, and Congress will begin the second (last) session of the 118th Congress. As we move toward the second session let's review where ACT is with our legislative agenda for the rally in Feb.

As you know ACT's legislative strategy is to educate all members concerning our desired legislation and then focus on gaining the support of both House and Senate Armed Service Committee members (HASC and SASC) to include our legislation in the National Defense Authorization Act (NDAA). The NDAA has been passed each year since the late 1950s. That makes it a good vehicle for attaining our legislative goals. Therefore, our goal has been to get a SASC or HASC member to include our language in the NDAA during its development and passage. After hearings are completed, the bill is considered in a session that is popularly known as the "mark-up" session. Members of the committee study the viewpoints presented in detail and may offer amendments to the bill. The committee members then vote to accept or reject these changes. So, I expect that the NDAA will continue to be our preferred method to get our legislation passed.

Our legislative packets for the 2024 rally will include:

Amending Title 32 Section 709 to entitle Guard technicians to have their position converted to Title 5 National Guard employee when they have completed the required years of service for non-regular military retirement. The converted employee would be allowed to remain employed with the Guard until qualified for an unreduced FERS annuity under Title 5 section 8412.

Amending Title 5 section 6323(a) to increase military leave available to federal employees from 15 to 30 Days per FY. This legislation would basically be doubling the military leave available to federal employees and making State Active Duty (SAD) eligible for utilizing military leave. In Feb. some staffers indicated extra military leave may be a tough sell in the current Congress especially in the House since the current majority is generally hostile to federal employee benefits. But if we focus our discussions on additional military leave assisting in recruiting and retaining federal employees in the Guard, we may move the needle in our favor.

LEGISLATION UPDATE CONT.

LES HACKETT/ ACT LEGISLATIVE DIRECTOR

The TRICARE Reserve Select (TRS) eligibility issue for Feds seems to get a lot of verbal support on the Hill, but I see little indication of legislative action to fix the problem (Currently FEHB eligible individuals are not eligible for TRICARE Reserve Select until after 1 Jan. 2030). Therefore, ACT has decided to support legislation already introduced in the House called the “Healthcare for Our Troops Act” (H.R. 4221). The legislation would go well beyond the TRICARE Reserve Select eligibility issue and provide new benefits for traditional Guard and Reserve members. It would ensure every service member has healthcare, and provide premium-free/zero cost-sharing medical coverage for Selected Reserve members. It would also require a study on eliminating annual physicals during drill and replacing them with forms to be completed by civilian providers to assess medical readiness--giving commanders back valuable training days and saving over \$162 million annually in contracted medical assessments. Finally, this legislation eliminates the statutory language that excludes Federal Employees Health Benefits Program eligibles from TRICARE Reserve Select eligibility immediately on enactment rather than Jan. 1, 2030. We have decided it makes sense for ACT to support this legislation since it already has already been introduced and garnered some Congressional support.

One issue that we have had some success on is pushing back on the ANG's ill-advised initiative to convert technician positions to AGR through the NDAA process. FY 2019 through FY 2021 the ANG converted over 8,000 technician positions to AGR but for FY 2022 and 2023 we convinced the SASC that additional conversions would hurt rather than enhance readiness, and they held the line on any further conversions/ reductions in technician end strength. As I write this article the 2024 NDAA has passed both houses and maintains the ANG end strength at 10,994. Obviously, ACT will continue to keep this issue in front of congress as the HASC and SASC develop the NDAA for 2025.

For ACT's Federal Firefighter Members, “the Federal Firefighter Pay Equity Act” (H.R. 1235). Unlike other federal workers, federal fire fighters receive only partial retirement credit for their regularly scheduled work shift.

LEGISLATION UPDATE CONT.

LES HACKETT/ ACT LEGISLATIVE DIRECTOR

Currently, the federal government's firefighters work a 72-hour week, of which 19 hours are considered mandatory overtime. They are paid time-and-a-half for their overtime service, but when the government calculates their retirement pay, it treats all 72 hours as regular work time. The Federal Firefighter Pay Equity Act would require the government to treat time federal firefighters spend on mandatory overtime as overtime for the purposes of making their annuity calculations, which are based on an average of the highest three years of a retiring worker's salary. The bill would also establish a new provision that would make a major change to federal firefighters' working conditions. It mandates that the Office of Personnel Management develop regulations to establish that firefighters' "regularly recurring" workweeks max out at 60 hours, rather than the current 72 hours.

To review our legislative agenda for the 2024 ACT Rally:

1. Amend 32 USC sec. 709 to entitle technicians to have their position converted to Title 5 (without the dual status requirement) once they are eligible for Guard retirement in order to allow them to reach FERS retirement.
 2. Amend 5 USC sec. 6323(a) to increase military leave available to federal employees from 15 to 30 Days per FY.
 3. Support the "Healthcare for Our Troops Act" (H.R. 4221).
 4. Continue to fight against any additional ANG technician positions being converted to AGR authorizations.
 5. Support "the Federal Firefighter Pay Equity Act". (H.R. 1235)
- If you have any questions or need assistance getting ready for the rally in Feb., send me an email and I will assist you in any way I can. lhackett@actnat.com

LEGISLATION UPDATE CONT.

LES HACKETT/ ACT LEGISLATIVE DIRECTOR

To reiterate: any help with phone calls or emails to your Legislators would be a great help and may make the difference in getting our language into the NDAA or not. In the end constituent input is very important to these folks.

I have the work emails for most of the SASC and many of the HASC members office staff. I don't want to publish them in the newsletter but if your House member or Senator is a member of those committees and wants their staffer email to let me know and I will email it to you.

ACT has been working for many years to realize our legislative goals. Gaining support for and getting our legislation enacted into law can be slow and sometimes very frustrating. A good example is our efforts to gain MSPB rights for technicians that other federal employees have enjoyed for decades. I have been attending ACT Hill rallies since the mid-1990s. As I recall the MSPB issue was in the packet we took to the hill way back then. Congress finally heard our voices and enacted technician MSPB rights in the 2017 NDAA. I believe we can realize our legislative goals, but it can be a slow slog, we just have to keep doing the work and present our case to Congress.

Keep the faith,

Les Hackett/ ACT Legislative Director



AF NEWSLETTER

FRIDAY, DECEMBER 15, 2023

The Office of Personnel Management (OPM) is issuing a final rule to redefine the geographic boundaries of the Northeastern Arizona and Utah appropriated fund Federal Wage System (FWS) wage areas for paysetting purposes. The final rule will redefine Washington County, UT, and several National Parks portions of Garfield, Grand, Iron, San Juan, and Wayne Counties, UT, to the Northeastern Arizona wage area.

Effective date: This regulation is effective December 15, 2023.

Applicability date: This change applies on the first day of the first applicable pay period beginning on or after December 15, 2023.

The rulemaking proposed to redefine Washington County, UT; and the Bryce Canyon, Capitol Reef, and Canyonlands National Parks portions of Garfield County, UT; the Arches and Canyonlands National Parks portions of Grand County, UT; the Cedar Breaks National Monument and Zion National Park portions of Iron County, UT; the Canyonlands National Park portion of San Juan County, UT; and the Capitol Reef and Canyonlands National Parks portions of Wayne County from the Utah wage area to the Northeastern Arizona wage area. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus.

<https://www.federalregister.gov/documents/2023/11/15/2023-25155/prevailing-rate-systems-redefinition-of-the-northeastern-arizona-and-utah-appropriated-fund-federal>

Special Rate schedule data files can be found at the following link:
https://wageandsalary.dcpas.osd.mil/WageData/AF_Special_Rates/

All AF FWS wage schedules can be found at the following link:
<https://wageandsalary.dcpas.osd.mil/BWN/AFWageSchedules/>

Celebrating 50 years of the Federal Wage System 1972-2022

GET A GOOD NEGOTIATION GROUND RULES AGREEMENT

Daniel Schember

A good Memorandum of Understanding (MOU) establishing procedures for negotiating a collective bargaining agreement (CBA) is an essential document for strong, effective union action. Fortunately, the ACT model ground rules MOU was endorsed by the National Guard Bureau (NGB) and has been adopted for several CBA negotiations. Still, management representatives in some states are resisting adoption of the ACT model. In these states, ACT should stand its ground. The important features of a good MOU—reflected in the model ACT MOU endorsed by NGB—are the following.

Adequate Union Representation on Official Time

Agency representatives in some states think that they can limit the number of union representatives on official time to the number of representatives designated by the agency. Not so. The union can negotiate official time for a number of union representatives that exceeds the number of agency representatives. An MOU, however, cannot limit the number of agency representatives. The proper union approach, therefore, is to negotiate official time for a minimum number of union representatives—five to eight, depending on the circumstances; require that the union be allowed official time for any greater number of representatives designated by the agency; and not require the union to reduce its representatives on official time if the agency subsequently reduces the number of its representatives. In this way, the union is entitled to a minimum, and at least equal, number of union representatives on official time and cannot be “jerked around” by a subsequent agency decision to send to the bargaining table, say, only one representative, such as the agency JAG.

Pre-Meeting Procedures to Clarify Significant Differences

A couple of rounds of pre-meeting proposal and counterproposal exchanges, followed by pre-meeting teleconferences, can identify significant differences that need to be addressed at the meetings. For the pre-meeting teleconferences, moreover, the union can designate legal counsel as a representative, so that legal disputes can be clarified in advance of the meetings.

GET A GOOD NEGOTIATION GROUND RULES AGREEMENT CONT.

Daniel Schember

Equal Right to Determine the Negotiation Agenda and Mediator Presence

There should be no disputes about what subjects to address at a meeting—no disputes about whether to “table” a subject for later discussion. During specified, equal times, each party should have the right to determine the subject(s) to be negotiated—and to invite a mediator to attend. With major disputes known in advance, the union can schedule them for negotiation at a specified time, with a mediator, educated in advance, in attendance. If agency recalcitrance continues, impasses promptly can be certified by the mediator and the union soon thereafter can proceed to impasse resolution. This is efficient.

No Premature Obligation to Appeal Non-Negotiability Assertions

The MOU should not require the union immediately to appeal, or waive disagreement with, agency assertions of non-negotiability. The union should have the right, in accordance with FLRA regulations, to file a negotiability appeal at any time before completion of negotiations. The union, though, should avoid the need for FLRA negotiability appeals by presenting proposals that indisputably are negotiable, so that contrary agency allegations can be rejected by the FSIP. The union can achieve major advances merely by presenting proposals that indisputably are negotiable and within FSIP jurisdiction to order.

No Restriction of Proposals Until Completion of Negotiations

The MOU should allow proposals on any subject prior to completion of negotiations. The initial proposals, absent agreement to them, should not restrict subsequent proposals at all. Because the union should insist that the CBA allow mid-term negotiation of any subject not expressly contained within the CBA, there is no reason to restrict the subjects of the term negotiations, to which agreement has not been reached, prior to completion of negotiations. These subjects, if a proper mid-term negotiation provision is in place, will be negotiable immediately after the CBA is effective, if they are not negotiated during the term negotiations.

GET A GOOD NEGOTIATION GROUND RULES AGREEMENT CONT.

Daniel Schember

Union Ratification, But Not AG Approval

Because the union is a democracy that can act only by majority vote at previously noticed union meetings, it is not feasible to require the union to accept or reverse the daily negotiation decisions of its representatives. The same, however, is not true for the agency, which is a hierarchy controlled by a single individual, who on a daily basis by phone calls, text messages, or emails, feasibly can control the decisions of the agency's negotiation representatives. A union's right to ratify or reject a negotiated agreement is a necessary aspect of union democracy. Not so, as to the agency, which (like the union) must be represented at negotiations by duly authorized representatives who can be controlled instantaneously by an AG communication.

The MOU should provide for union ratification of a negotiated agreement, but not permit TAG, after negotiations have been completed, to veto the agreement based on personal desires. Rejection on legal grounds is permissible, but the authority to do so has been vested in the Defense Civilian Personnel Advisory Service (DCPAS). Nothing prohibits TAG from communicating legal objections to DCPAS, but DoD regulations do not permit AG usurpation of DCPAS's regulatory authority to decide them. Further, if a CBA provision is unlawful, the agency is not precluded from so asserting when enforcement later is sought. For all these reasons, an AG's right to reject the negotiated CBA, based on personal choice or legality, is unnecessary and inappropriate.

ALASKA NATIONAL GUARD DELIVERS CHRISTMAS GIFTS AND TREATS TO CHILDREN IN ST. MICHAEL

BY LT. COL. CANDIS OLMSTEAD

ALASKA NATIONAL GUARD PUBLIC AFFAIRS

JOINT BASE ELMENDORF-RICHARDSON, Alaska -- The Alaska National Guard has a tradition of serving communities throughout Alaska during the holiday season, delivering Christmas gifts and a variety of delights to the children. In its 61st year, some things have changed over time, but the joyfulness and excitement never does. The island-town of St. Michael was selected for a visit this year, and they expressed gratitude and enthusiasm to their out-of-town guests who showed up to spread holiday cheer.

Op Santa delivered wrapped Christmas gifts for every child, infants through age 18, they provided fruit and served ice cream sundaes, and all of the students received new backpacks. The children and teens walked through a line of tables and filled their backpacks with snacks, stuffed animals, books, socks, toiletries, basketballs, footballs, and beautiful hand-knit hats made with love from a group of volunteers who live in Florida.

Santa and Mrs. Claus visited the town of St. Michael Dec. 5, welcomed by the community, whose population of about 400 is largely Yup'ik Eskimo. Santa took about 30 elves with him, and they were thrilled to catch a ride on one of the Alaska Air National Guard's brand new HC-130J Combat King II aircraft from the 211th Rescue Squadron.

"It was an honor to step in for Rudolph and the other reindeer and fly these folks here in one of our rescue aircraft, still shiny and new," said Lt. Col. Eric Budd, Op Santa pilot and commander of the 211th Rescue Squadron.

After the aircraft arrived in St. Michael, a flurry of activity began as elves stepped out onto crunchy snow and large boxes were off-loaded and transferred to vans and pickup trucks driven by community volunteers. The jolly out-of-town guests were welcomed with hospitality and smiles as they arrived at the all-grades school, feverishly unpacked, organized items and finished preparing for the big event.

The faculty and students had eagerly anticipated their guests and the Christmas event, evident by the many colorful decorations, lights, and an impressive display built by the students to house Santa and Mrs. Claus, including a tree, chairs, décor and lighting.

ALASKA NATIONAL GUARD DELIVERS CHRISTMAS GIFTS AND TREATS TO CHILDREN IN ST. MICHAEL CONT.

“We’ve been looking forward to Op Santa for months,” said Anthony A. Andrews School principal, Mr. Jon Wehde. “Our community is so excited for this visit and we really appreciate the generosity and kindness of everyone involved,” he said.

Op Santa began in 1956 as the Anchorage community assisted the village of St. Mary’s after negative impacts of natural disaster left them with no money to buy Christmas gifts. The Air Guard’s 144th Airlift Squadron delivered donated goods to the remote village in a C-123J Provider. Since then, Air Guard C-130s, Army Guard C-23 Sherpa, UH-60 Black Hawk, and other aircraft have transported Santa and Mrs. Claus, elves, gifts and other desirable items to tens of thousands of children throughout rural Alaska.

“The event is important because it began due to the impact of natural disaster and continued as a way to reach rural Alaska for building community relationships, serving those in remote areas, and providing joy and comfort to Alaskans during the holiday season,” said Maj. Gen. Laurie Hummel, former adjutant general for the Alaska National Guard.

Many Alaskans in rural communities may go most of their lives without personal interaction with service members in the U.S. military, and Op Santa allows Soldiers and Airmen to build connections in a personal and tangible way.

“Engaging Alaskan communities is a priority for the Alaska National Guard and Operation Santa Claus is one way we can show our Alaskan neighbors that we care,” said Hummel.

Airmen and Soldiers in the Alaska National Guard worked with The Salvation Army and community volunteers to coordinate and execute the Op Santa mission.

“Op Santa really isn’t possible without all of the volunteers who pull it together,” said Hummel. “This community outreach program is a time-honored tradition that we hope to continue for many years to come.”

GUARD BUREAU DEFIES CONGRESS ON FIREFIGHTING VEHICLE STAFFING

DANIEL SCHEMBER

In December 2022, Congress enacted Section 388 of the National Defense Authorization Act for Fiscal Year 2023 (NDAA23 Sec. 388), which required the Secretary of Defense to ensure within one year that “the minimum staffing requirement for any firefighting vehicle responding to a structural building emergency at a military installation is not less than four firefighters per vehicle; and . . . the minimum staffing requirement for any firefighting vehicle responding to an aircraft or airfield incident at a military installation is not less than three firefighters per vehicle.”

On December 8, 2023, Air National Guard Director LTG Michael A. Loh issued a memorandum that “direct[ed] all ANG F&ES [Fire and Emergency Services] to . . . not implement the NDAA23 Sec. 388 requirements” until “shortfalls identified” in a “29 Oct 2023 . . . official report to . . . the Secretary of the Air Force” are “resolved.” The December 8 memorandum did not identify the “shortfalls identified” in the report but said, “Based on available resources to the ANG F&ES, compliance with the NDAA23, Sec 388 requirements is infeasible.”

The apparent premise of LTG Loh’s infeasibility argument is that Congress has no authority to order the ANG to increase the “available resources” needed for “compliance with the NDAA23, Sec 388 requirements” by either (1) allocating more of the currently available ANG resources from other ANG activities to F&ES or (2) allocating more of the currently available ANG F&ES resources from other F&ES purposes to firefighting vehicle staffing. LTG Loh’s memorandum appears to say that (a) the ANG has sole authority to allocate funds appropriated for the ANG; (b) if Congress desires expenditures in addition to those previously selected by the ANG, Congress must specifically and expressly appropriate additional funds for them; and (c) a congressional command requiring any change of previous ANG allocation decisions lawfully can be defined as “infeasible.”

GUARD BUREAU DEFIES CONGRESS ON FIREFIGHTING VEHICLE STAFFING

DANIEL SCHEMBER

This ANG assertion of authority to defy Congress is breathtaking. ACT must be on the frontline fighting this unlawful ANG defiance of Congress. ACT must both grieve the unlawful defiance and inform Congress of ACT's view that the ANG's defiance is unlawful.

The collective bargaining law allows the granting of official time to all employees for any purpose authorized by the law. One of the purposes authorized by the law is informing Congress of the views of the union. ACT's view is that the ANG should comply with the law. All employees in an ACT bargaining unit that includes firefighters should be entitled to official time to inform Congress of the union's view—unless the CBA (erroneously) restricts the use of official time to union representatives, not all employees. Even if the CBA restricts the use of official time to ACT representatives, our representatives should be entitled to official time to communicate with every Member of Congress ACT's view that the ANG should be required to comply with the law.

AWARDS—A GREAT OPPORTUNITY FOR BARGAINING

DANIEL SCHEMBER

A 1986 decision written by former Supreme Court Justice Antonin Scalia, then a D.C. Circuit Court of Appeals judge, established one of the most important principles of collective bargaining favorable to employees—determination of employee awards is not part of the management rights to assign work or direct employees.

Further, although the agency has a management right to determine the overall budget for monetary awards, Federal Labor Relations Authority (FLRA) decisions indicate that the percentage of the agency-determined budget to be allocated for awards to bargaining unit employees is negotiable. If, say, 80% of agency expenditures for civilian employment pay goes to bargaining unit employees, would it not be appropriate that 80% of the awards budget be allocated for bargaining unit employees?

Regarding types of monetary awards, a 2019 Office of Personnel Management (OPM) memorandum noted that most awards are tied to rating-based performance awards. . . . We encourage agencies to reexamine, and adjust as appropriate, the balance between rating-based awards and individual contribution awards (e.g., special act awards). When granting rating-based awards, agencies should allocate awards in a manner that provides meaningful distinctions in performance. In doing so, agencies are expected to honor all collective bargaining obligations and agreements to the extent consistent with law and [government-wide] regulation.

AWARDS—A GREAT OPPORTUNITY FOR BARGAINING CONT.

DANIEL SCHEMBER

On this subject, the current National Guard Bureau Instruction states that “the Adjutant General may pay bonuses or cash awards, [or] grant time off . . . on the basis of performance appraisal rating of record or . . . [a] special act or service.”

And an October 2022 Department of Defense (DoD) memorandum states, “Collective bargaining agreements . . . may provide for a structure and minimum award amounts or percentages based on the ratings received by employees.”

Currently, however, there is a great imbalance “between rating-based awards and individual contribution awards.” We are aware of no State Guard that awards any rating-based awards—awards to all employees with a 5 or 3 rating either in a specified amount or as a specified percentage of pay. Rather, awards are determined exclusively by individual management decisions—as if determining awards were a management right, though it is not. Establishing an appropriate balance that allocates a major portion of the awards budget for rating-based awards for bargaining unit employees is a proper goal of collective bargaining. Indeed, an annual bonus for successful performance is a standard practice in not only private sector, but also many federal government agencies.

What if the agency in negotiations resists change but we obtain an impasse resolution that, in accordance with prevailing practices, allocates a major portion of the awards budget for rating-based awards for bargaining unit employees? Could the agency retaliate by simply setting the awards budget at zero? Doing this would preclude monetary awards to managers, supervisors, and other non-bargaining unit employees, which might be a sufficient disincentive for such a policy; but even if the agency might be willing to adopt such a “scorched earth” monetary awards policy, to everyone’s detriment, we have two options to deter or prevent this.

AWARDS—A GREAT OPPORTUNITY FOR BARGAINING CONT.

DANIEL SCHEMBER

First, we can negotiate for a provision that requires the agency to grant very substantial time off awards (TOAs) to the extent the awards budget is insufficient to provide rating-based awards either in a specified amount or as a specified percentage of pay. Because TOAs are not budget items, they are fully negotiable—so, even if the awards budget is sufficient, TOAs can be negotiated as well. But a provision requiring very substantial TOAs to the extent the awards budget is low—say, six weeks if the budget is zero, with proportionately shorter TOAs to the extent the budget is higher—should deter the agency from adopting a scorched earth policy.

Second, although the management right to determine the budget is not one of the rights that expressly must be exercised “in accordance with applicable laws,” exercise of the right is subject to negotiation of “appropriate arrangements.” FLRA decisions indicate that compliance with law, including regulations having the force and effect of law, can be a negotiable appropriate arrangement.

Regarding awards budgets, DoD documents impose significant requirements. The October 2022 memorandum referenced above states, for example, “DoD Components will fund an awards budget in FY 2023 at a level that . . . supports the recruitment and retention of high-performing employees.” Further, information to assess the agency awards budget should be available, as the memorandum also states:

In FY 2023 budget requests, agencies must provide the following information on agency-wide salary and awards spending: (1) an estimate of FY 2022 salary spending, excluding salary spending for Senior Executive Service (SES), Senior Level (SL), and Scientific or Professional (ST) positions, (2) an estimate of FY 2022 awards spending as a percent of FY 2022 non-SES/SL/ST salary spending, and (3) the amount requested for FY 2023 non-SES/SL/ST salary spending.

AWARDS—A GREAT OPPORTUNITY FOR BARGAINING CONT.

DANIEL SCHEMBER

Other DoD documents have imposed more specific requirements. A January 12, 2022, DoD memorandum states:

For fiscal year (FY) 2022, and consistent with provision of Section 32 of the Office of Management and Budget (OMB) Circular No. A-11, "Preparation, Submission, and Execution of the Budget," Department of Defense (DoD) Components must maintain awards spending at no less than one percentage point above FY 2020 non-SES/SL/ST salary spending. For example, if an agency requests that awards spending in FY 2020 will equal 1.5 percent of FY 2020 non-SES/SL/ST salary spending, that agency must allocate an amount towards awards equal to no less than 2.5 percent of requested non-SES/SL/ST salary spending in FY 2022. In other words, if an agency spent 1.5% in 2020, it would have increased to at least 2.5% in 2021, and would be no less than 2.5% in 2022.

Information received from a few National Guards has revealed gross non-compliance with DoD requirements—no established awards budget, at all, and expenditures well below the required amount.

It is reasonable to expect that future DoD requirements will be similar to those noted above. If compliance with law and similar DoD regulatory requirements is a negotiated appropriate arrangement, failure to establish an awards budget and failure to implement compliant expenditure levels—let alone a zero awards budget—would be "arbitrary and capricious" and "unlawful" under 5 U.S.C. § 706(2)(A).

In short, we have substantial power to change through collective bargaining current agency awards policies that are grossly inconsistent with established practices elsewhere in the federal government.

2024 NDAA CONFERENCE COMMITTEE REPORT

All, I see the Conference Committee Report is out for the 2024 NDAA.

Looks like the Guard Technician numbers for FY 2024 will remain the same as 2023. (see below red font)

I will do a more in-depth analysis and report out.

In the meantime the report is available on the HASC website if you want to take a look.

<https://armedservices.house.gov/sites/republicans.armedservices.house.gov/files/FY24%20NDAA%20Conference%20Report%20-%20%20FINAL.pdf>

Les

SEC. 413. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS).

The minimum number of military technicians (dual 16 status) as of the last day of fiscal year 2024 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

- (1) For the Army National Guard of the United States, 22,294.
- (2) For the Army Reserve, 7,990.
- (3) For the Air National Guard of the United States, 10,994.
- (4) For the Air Force Reserve, 6,882

All ACT Family

MERRY CHRISTMAS & HAPPY
NEW YEAR!!!!

Ya'll have a safe & fun time with
family & friends this Christmas
enjoying each other.

AND

GET SOME REST...cause 2024 is
coming thru the door 🥰

Thanks for ALL Ya'll Do For
ACT...Keep The Faith,
Deanna & Terry

THE MORE YOU KNOW



Supreme Court vacates ruling restricting president's right to issue federal workforce mandates

The high court ended the case against President Biden's vaccine mandate, calling it moot.

 Government Executive / Dec 11, 2023

www.govexec.com/workforce/2023/12/supreme-court-vacates-ruling-restricting-presidents-right-issue-federal-workforce-mandates/392636/?oref=ge-home-top-story



Stealth Upgrade: Alabama Guard Wing Gets First F-35s

The Alabama Air National Guard's 187th Fighter Wing received its first F-35s on Dec. 6 with three fighters flying to Dannelly Field.

 Air & Space Forces Magazine / Dec 12, 2023

www.airandspaceforces.com/alabama-air-national-guard-first-f-35s/

Prevailing Rate Systems; Redefinition of the Northeastern Arizona and Utah Appropriated Fund...

The Office of Personnel Management (OPM) is issuing a final rule to redefine the geographic boundaries of the Northeastern Arizona and Utah appropriated fund Federal Wage System (FWS) wage areas for pay...

 Federal Register / Nov 15, 2023

www.federalregister.gov/documents/2023/11/15/2023-25155/prevailing-rate-systems-redefinition-of-the-northeastern-arizona-and-utah-appropriated-fund-federal



Biden signs order finalizing 5.2% pay raise for feds in 2024

The measure confirms that the federal workforce will see its largest pay increase in more than 40 years.

 Government Executive / Dec 21, 2023

www.govexec.com/pay-benefits/2023/12/biden-signs-order-finalizing-52-pay-raise-feds-2024/392978/?oref=ge-home-top-story



Maximizing Effective Use of Probationary Periods

<https://chcoc.gov/content/maximizing-effective-use-probationary-periods>



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