

THE TECHNICIAN

July - September 2019 | *Keep the Faith*

Issue #4 , Vol. 77

**ACT WELCOME'S TEXAS AIR GUARD FOLKS AS OUR NEW CHAPTER.
ACT CARES / EMPLOYEE'S KNOW / ACT GROWS**

Duty • Dignity • Dedication

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President Chapter #7 New York

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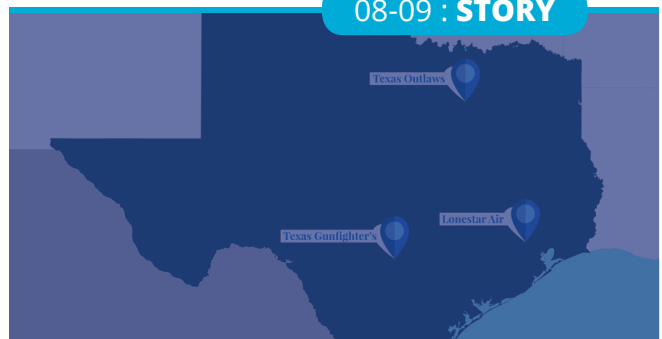




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Memorandum

NGB-J1-TN Critical Update

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**DON'T JUST STAND BY
AND WATCH, GET
INVOLVED!!**



Memo for all Techs regarding NGB-J1-TN

Critical Guidance Update to Assignment of Military
Training Duties to Title 32 National Guard Technicians

By Denise DeSena

President Chapter #7 New York

Recently my base scheduled a FULL BLOWN CBRN exercise on a Technician Friday not previously outlined in our Special Order as a "Mandatory Active Duty" day.

According to the updated Memorandum NGB-J1-TN, dated 29 June 2017, paragraph 7 states that "National Guard Dual-Status Technicians may be assigned to train in the wear and use of chemical warfare equipment while in technician status in accordance with the Federal Labor Management Relations Statute, Section 7106(a)." However, the vagueness of this statement

was the subject of various interpretations that lead to a pretty heated debate.

Long story short, after conferring with other ACT reps, it was my understanding that those few simple words meant this: Here is your gear, this is how you put it on and this is why you put it on, objectives we interpreted to be performed in a class room setting for awareness ONLY.

On the other hand, my Wing and Vice CC believed this statement meant that "use and wear" was encompassing enough to warrant Technicians to "play the field" while dressed in full chem gear and perform

tasks such as launching / recovering aircraft, accomplishing par team sweeps and practicing litter team functions.

After several months of sporadic debate, it was clear we were never going to agree on the intent of the statement. So, I went ahead and got one of my NY Reps involved (thank you Jim Davidson). With that we got in touch with HR here in Latham, New York, but our Commanders still insisted on attempting to stretch what they were being told in order to proceed with the exercise as scheduled. It just so happens that 1 day prior to the exercise being held, those same HR personnel

were here on base for another reason, but I insisted on a meeting with them and my Command Staff, so we could settle this issue once and for all.

Here is what I asked, and here is what I was told:

What happens if a Tech gets hurt while performing these duties in Chem Gear on a Non-

responsible for a Techs medical bills if, while performing tasks NOT outlined in their position description, and the DOL and OWCP deem their claims out of their scope of coverage? The member will be responsible.

What if someone gets killed, what happens then, who pays out? We don't know.

As a result of this conversation, HR then directed my CC to eliminate or modify the CBRN portion of the exercise due to the lack of assurance that Technicians would NOT be personally held responsible for medical bills resulting from an injury incurred while wearing Chem Gear outside the realm of a limited exposure formal classroom environment.



Mil day? They file a claim with Office of Worker's Comp.

Can you guarantee that such injuries will be covered? No, that is for the Compensation Board and the Dept. of Labor to decide.

Can you call and someone at DOL and OWCP and find out if these types of injuries in Technician status can be claimed, and will be approved?

No, there are too many variants depending on type and extent of injury so each case is either approved or denied on the sole discretion of the case investigator.



If you find yourself in the same position at some time, I urge you, address this matter with utmost importance and DO NOT PARTICIPATE in these events in Tech status, as you're safety and coverage benefits are NOT GUARANTEED.

Then, if denied, who is going to be held



NATIONAL GUARD BUREAU
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29 June 2017

MEMORANDUM FOR ALL NATIONAL GUARD HUMAN RESOURCE OFFICERS

SUBJECT: Critical Guidance Update to Assignment of Military Training Duties to Title 32 National Guard Technicians

- References:
- (a) NGB-J1-TN Memorandum, "Guidance to allow Dual-Status National Guard Technicians to Receive Influenza Vaccine While in Technician Status (TN-11-24)", 27 October 2011
 - (b) Department of Defense Directive 5210.56, "Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities", 1 April 2011
 - (c) 5 United States Code, Section 7901, "Health Service Programs", 7 January 2011
 - (d) U.S. Office of Personnel Management (OPM) Memorandum for Heads of Executive Departments and Agencies, "Immunizations Of Federal Workers with 2009 H1N1 and Seasonal Flu Vaccines", 30 September 2009
 - (e) Technician Personnel Regulation 400, "The Technician Human Resources Development Program", 14 September 2007
 - (f) Federal Labor Relations Authority, Statue 7106a, "Labor-Management Relations, Management Rights", 2 August 2002

1. The purpose of this memorandum is to provide updated guidance in accordance with the above references.
2. The NGB-J1-TN Memorandum (TN-12-08), "Assignment of Military Training Duties to Title 32 National Guard Technicians," 13 March 2012, is hereby rescinded.
3. National Guard Technicians may not attend military technical training schools in technician status. These schools are intended to train personnel in military occupational specialties and in some cases require mandatory physical training standards or other military training that is over and above the enhancement of technician job performance.
4. National Guard Technicians will not participate in medical mobility processing. Medical mobility processing or any other procedure requiring weigh-ins, urinalysis, or drug testing must be completed in an inactive duty or active duty military status. Drug testing for observation of erratic behavior requires the

technician be placed in military status, either inactive duty or active duty. For mishap investigation toxicological testing, although placing technicians in military status is preferred, it is not required; accomplishing the toxicological test expeditiously is more critical than the technician's status.

5. National Guard Technicians may not be required to receive immunizations to maintain worldwide medical deployment requirements. Technicians may however, voluntarily receive influenza vaccine in accordance with OPM guidance references above and TN-11-24.

6. National Guard Technicians, Dual-Status and Non-Dual Status, may be authorized excused absence of short duration to participate in voluntary Physical Fitness Programs (PFPs). Technicians cannot be required to undergo an annual military physical fitness test while in technician status, either voluntary or involuntary. Technicians are encouraged to participate in PFPs in accordance with 5 U.S.C. 7901.

7. National Guard Dual-Status Technicians may be assigned to train in the wear and use of chemical warfare equipment while in technician status in accordance with the Federal Labor Management Relations Statute, Section 7106(a).

8. National Guard Dual-Status Technicians may be required to fire, qualify, and carry a weapon while in technician status when the duties of their technician position requires such in accordance with DoDD 5210.66.

9. Point of contact is Ms. Adriene Dallas; NGB-J1-TNL; 703-607-1365 or Ms. Sheryl Scott; NGB-J1-TNL; 703-604-9667.



ROBERT W. TETREULT
Chief, Technician Personnel Division
National Guard Bureau





ARKANSAS TRAINING AND RECRUITING TRIP

By: Steve Olguin

Attending training from left to right. Mike Caffey, Daniel Hayes, James Evans, Mark Barger, Scott Elliot, Luke Sossamon, Justin Likens, and Steve Olguin ACT Field Rep in front.

ACT conducted steward and officer training for the Arkansas Air National guard chapters from July 9 – 11 in Russellville, AR.

During this training we had a few new faces, so we really concentrated on the legal aspect, to ensure that these new folks truly understood the rights that the union and their members have, as well as making sure that they understood managements rights. We also covered how to investigate grievances and adverse actions and the use of 7114 (b)(4) requests.

As most of you know that have been through the training that it can be somewhat overwhelming for a new steward, but in the end I believe they all had a pretty good understanding of how to move forward in their representative duties.

2020 RALLY DATES

ACT 60 Years

Embassy Suites Alexandria Old Town

**Arrive-Check In: Tuesday February 4, 2020 - Registration fee due then per delegate.
Depart-Check Out: Sunday February 9, 2020**

ACT 2020 Rally Link

https://embassysuites.hilton.com/en/es/groups/personalized/W/WASOTES-JAC-20200204/index.jhtml?WT.mc_id=POG

WELCOME TEXAS AIR CHAPTER'S TO ACT!

Texas Air Guards long road to ACT!!

By: Steve Olguin
ACT Field Rep Midwest Region

It started with a phone call back in early 2015, I heard rumor that the Air Guard wasn't happy with their representation, I invited them to a training session I was doing with the Texas Army in April of that year, followed up with emails and a meeting with the Fort Worth units union leadership in November 2015, this started the ball rolling, mind you a very big ball as there were many moving parts in this process.

The biggest challenge with the converting these folks to ACT was to overcome their FLRA certification, as there are currently 3 different wings and 3 different chapters, but their certification was held by a state council that was non-existent. It took a few years to un-wrangle this mess, and of course there are deployments. With the leadership of the Fort Worth unit and Mr. Jayson Deleon, we started pushing forward with a Montrose, to see if we can separate the unit from the state council.



In early 2018, we finally got the Montrose process done and filed with the FLRA, as expected AFGE fought this on grounds that they can't split the unit, the FLRA upheld the argument and rejected the filing. Now the real work started.

We decided to try and gather the needed signatures to force a statewide petition, at this time we really didn't have the San Antonio and Houston units on board, but after a meeting with the Houston chapter, Mr. Jose Lopez took it upon himself to coordinate and collect signatures there, between the Houston and Fort Worth units we were able to gather enough signatures to file a petition in July of 2018.

Again, there were issues, I erred and didn't correctly certify all of the signatures, so I had to rescind our petition, and now we had to recollect

the signatures, refile and move forward, thanks to the efforts of Jose and Jayson and others we collected even more signatures this time and refiled in September 2018. We had everything lined up ready to go, but now AFGE challenged with a contract bar, which was crazy since last contract was done in 1995, now way a contract bar was in place, but AFGE said they would take issue to court and possibly push election a long way out, we were advised that if we pulled our petition and refiled on January 28th.

Now we had it, nothing AFGE could do to stop us, I visited all of the sites, let them know what was going on, and talked about the things ACT was doing and how we operate. It was awesome to see the enthusiasm of the folks to actually have someone working for them on their behalf.

The election process moved forward, with a call with the FLRA, AFGE and ACT to discuss election procedures we moved forward, but immediately after the call the AFGE council called into the FLRA and removed their interest from the election process, and on March 11th 2018 the sent a letter to all members in state of Texas letting them know that they were disbanding the organization. I could only take this that AFGE doesn't really want to represent

technicians!!! I can say that after this message went out, that all of the sites were now interested and looked forward to moving to ACT.



And now the election process, as employees still had a right to vote for not having a union, again setbacks, first the agency supplied the FLRA with a bad address list, and over 50% of ballot letters were returned, so director cancelled election, and ordered the state to provide a correct listing, this took a while, but we finally got it right and the election was held.

On July 12th, it was confirmed that the Texas Air National Guard Employees voted to join ACT!!

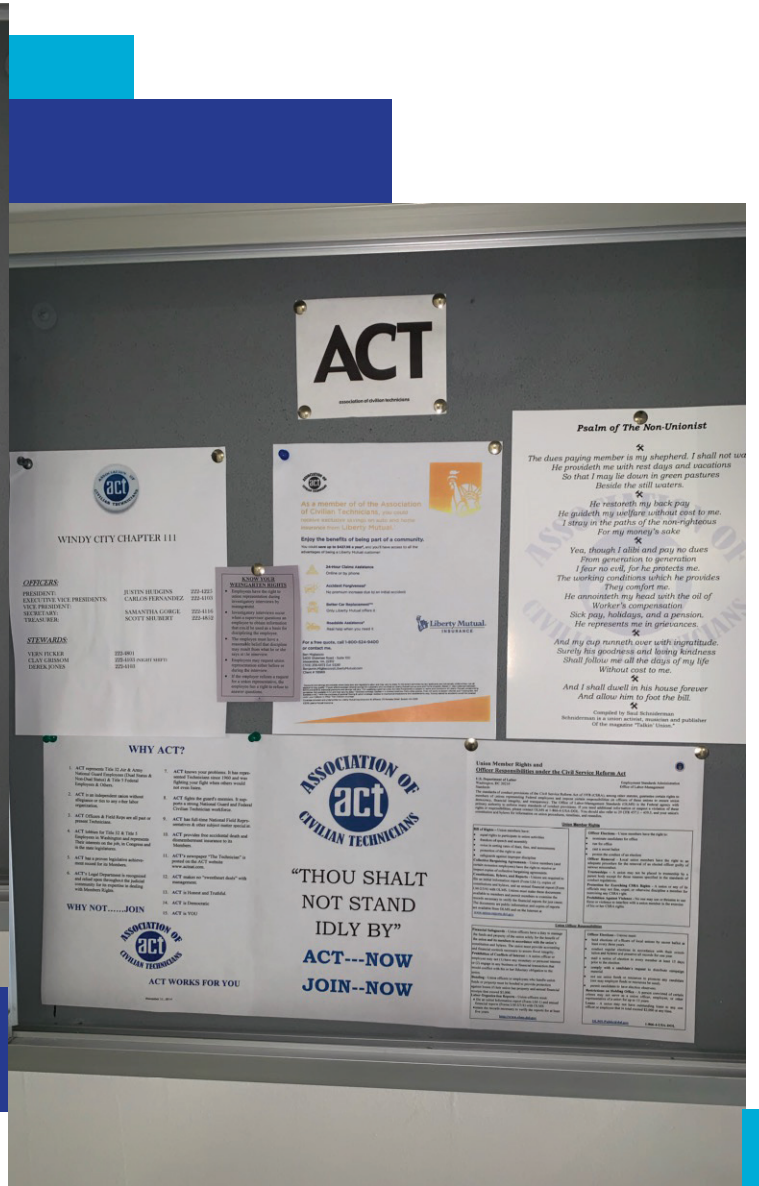
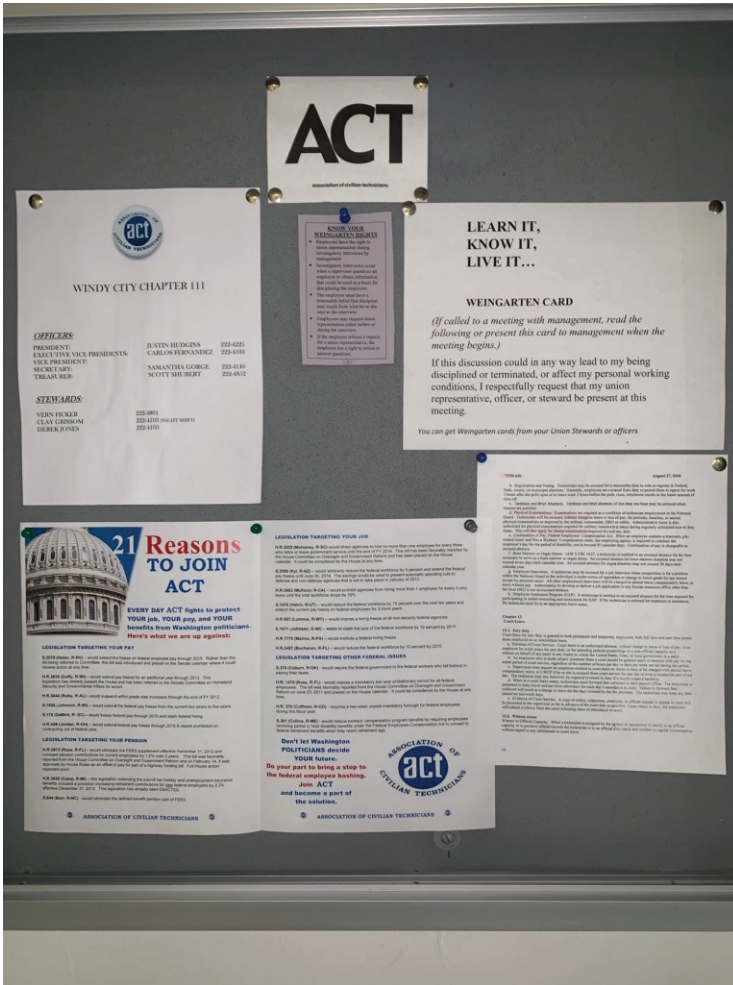
This was a long and trying process, but with the help of some great

folks in all three organizations, we finally got it done. We are currently working on getting them organized and membership processed. Terry appointed interim officers until they can get their bylaws and hold elections. We have a lot of things to accomplish with these folks over the next 12 months, training, elections, contract negotiations!!

If you run into the Texas folks in your travels, reach out and say hi and welcome to ACT!!

WINDY CITY CHAPTER #111

UNION OFFICE





DUTY

The ACT Member recognizes by service, social position and patriotism that duty to family, country, state, community and religious belief is foremost.

DIGNITY

The ACT Member understands and progresses the freedom and liberty of a responsible citizen by standing in associate forum with individual strength.

DEDICATION

The ACT Member is dedicated to job and performance in an honest and loyal manner that has been displayed by decades of unparalleled service.

WEINGARTEN RIGHTS

I believe this discussion could lead to my being disciplined. I therefore request that my union representative or officer be present to assist me at the meeting. I further request reasonable time to consult with my union representative regarding the subject and purpose of the meeting. Please consider this a continuing request, without representation, I shall not participate in this discussion. I shall not consent to any searches or tests affecting my person, property, or effects without first consulting with my union representative.

IF YOU USE A STORY, SOMETIMES THE ARGUMENTS CREATE THEMSELVES...

Travis Perry ACT Field Rep Northeast

A new, 22-year-old, 2-year WG-10 technician with E4 for military rank is probably only going to look at the money – example:

SRA Joey Bagodunuts...

“If I take that AGR job, I can put on SSGT, I can make twice what I’m making now each month – that means I can get my own apartment and buy a new car...PLUS I still get my college pretty much paid for! All I need to do is suck it up for a couple enlistments, do some deployments, then I’ll have my degree and I can either go OTS or get out and get a good paying civilian job...or, I can make a 20-year career out of this. If do that though, I need to focus on getting as high a rank as possible because no one can survive on SSGT retirement.”

Joey takes the AGR job. Joey does everything management demands of him. He studied hard and got through his skill-level CDCs...He got SSGT...and went to the NCO academy...he’s been taking online college courses and CLEP testing everything he can. Joey works hard. 6 years go by. Joey got permission to reenlist again. He’d gotten his bachelor’s degree – barely; if it hadn’t been for the downtime he had while deployed he probably wouldn’t have been able to get it done. He got a TSGT stripe (applied for and was chosen for an AGR TSGT position). Also, over those 6 years, he went on 5 deployments. Some were 4 months, but some were 6 months. When he was home, his unit put everyone on 12-hour shifts for weeks at a time; post-deployment repairs...pilot training requirements...pre-deployment prep... Some months he only got one full weekend off – he had drill one weekend a month sure, but Mission Capable rates were hovering around 75% when they needed to be at 80%, so the MXG commander started making everyone work a 12 on some Saturdays. Joey kept telling himself that all this was temporary, that the unit just needed to get over this slump, then he’d be able to take some time off; he’d racked up 60 days (maximum you can carry) consistently the last few years but has only been able to take a couple days here and there because his boss said he was needed on the flight-line. When he was able to take a week or so off, he had to sign for the weekend also – having to take leave for a weekend...who thought that one up? Never had to do that when he was a technician. His boss also “owed him” for all those 12 hour days...His boss said he was keeping track of all the extra hours everyone was working in a little black notebook he kept in his desk drawer and that he’d start “cutting people back” when things got slow...Joey started to wonder when things were going to get slow. Also, come to think of it, he’s never actually seen that little black book...

Well at least the pay was good...awesome in fact. Especially when deployed; TAX FREE BABY! Joey was able to increase his TSP contributions and have a little rainy-day fund in the bank. Pretty great... Got that new car 4 years ago and its only got 30,000 miles on it – he hadn't been home to drive it anywhere really...Got that apartment of his own, a nice one too. In a really safe neighborhood, had its own wash/dryer. Rent was a little high, but the BAH covered it easily...It was just hard to keep up on the rent when deployed 4-6 months a year. Joey relied on friends to drop the rent check off. It usually worked out ok, but a couple of times his buddy got deployed after he did...so he got a call from the 1st sergeant when he was in Afghanistan asking why he was getting a phone call from the rental agency...3 months overdue on the rent! Well, at least he'd gotten his own place to chill and sleep...mostly sleep since he was so tired from the 12-hour shifts. He thought, maybe it was time to start looking at changing careers, or maybe locations. After all, he'd done everything that had been asked of him. He'd been with this unit for 8 years now. He was due to be in line for E7. Then, he'd be off the line and working a nice cushy supervisor job. How hard could writing EPRs and Awards all day be anyway? MSGT pay...man that would be awesome. The trouble was, all the MSGT slots were filled...A lot of them by his "buddies" ...A lot of young MSGTs...All the old, "crusty" guys retired already or were non-retained. Maybe if he relocated to that unit he heard about on the west coast he'd get his MSGT stripe. He'd heard the unit was having a hard time filling all of the AGR slots they had which is really weird because who wouldn't want this kind of money??? The place couldn't be any worse than what he'd already endured. He wanted that stripe and to get off the flight line...His knees were starting ache a little in the morning (well, his morning – Joey's been on the second shift for the last 4 years...1500 – 2300; which actually meant 1500 – 0300, 12-hour days of course). Usually, he could jog it off during mandatory shift PT, but some cold winter nights they ached pretty good either way. Time to start flying a desk maybe. Hey, they call it the "Chair Force" don't they? His ears had been ringing a little lately too...well, not really ringing – he would hear like a tone or buzz that didn't go away for a while sometimes. He slept with a fan on sometimes to try to drown it out...

So, Joey applied for a job at that base on the west coast and was selected. It had taken some real convincing to get his commander to sign the transfer paperwork; the colonel had not been pleased. The meeting started out pleasant enough; the colonel tried to convince him to stay. He told Joey that he was one of the most valued crew chiefs he's got. He told Joey that there were going to be some MSGT slots opening real soon; there were some underperformers that he was likely not going to retain and that would open up some slots. When Joey asked him, who was going to get cut, that a lot of his friends were in those slots, the commander shifted the conversation back to Joey's career; transferring could be a mistake...things could get uncomfortable if he ever wanted to come back. Joey stood his ground and told the commander that he really needed a change and that he wanted to use the skills he had learned to help improve the west coast unit...to show 'em how east coasters do it and get the job done. Finally, the commander agreed to sign the paperwork...while muttering under his breath Joey probably wouldn't be welcome back.

15 Immediately, after settling in at the west coast unit, Joey realized that things could be much worse. The unit was short-handed and the mission capable rate was in the 40 percentiles. After talking with some of the local airmen, he found out that the unit hadn't implemented the AGR realignment very well. A lot of back door deals were made. Many of the older technicians that chose to realign, were

surprised with walking papers after their first 3 years as AGRs. Management apparently thought it was a good way to “clear the cupboard” of old mindsets. Getting rid of the older folks that remembered what being a tech was like would eliminate any “hurt feelings” when the 12-hour shifts started and there was no compensation. No more dealing with union stewards when disciplining someone for showing up to work late. No more bargaining, no more reasonable accommodations. No more silly “Contract”. So, management “cleared the cupboard” alright, and they lost a lot of their most experienced workers and trainers at the same time. The airmen Joey talked to also said that since then, all the younger airmen had to “up their game” or else. Or else what? Or else it would be reflected on their EPR. Keep your mouth shut. Don’t protest or argue on things like - it’s 100 degrees on the line but no one’s allowed to bring even a water bottle with them. The expo truck had a water jug – when he comes by, you just take that paper cup and fill it up. Oh, and you can drink as much water as you want, as long as Expo doesn’t have somewhere to be. Also, make sure your paper cup gets in the trash bag in the expo truck before he leaves, don’t just throw it in cab of the truck – the airmen that clean the expo truck at the end of each shift really hate picking them up.

Joey wasn’t sure he’d made the right decision. He’d been at the west coast unit for 6 months and barely had time to find an apartment. He had to schedule the arrival of the movers to drop off his stuff on his days off. Joey’s new days off were Monday/Tuesday. The west coast unit decided rotating days off throughout the week helped keep the “machine moving”. The rotating shifts were the brainchild of the new commander who had transferred from active duty to ANG. His mission heavy opinion was that the flight line never sleeps – there should always be someone working, especially with their mission capable rates as low as they.

Joey seldom actually got to enjoy his days off when he actually got them off. He had to make sure that he was still doing community service to pad his military resume. It was easy back home – he just volunteered with his old boy scout troop – didn’t even feel like work! Now, he was a stranger in a new town and no one would give him any tips on what to do for community service (other NCOs didn’t want him to get one up on them...sharing their easy ways to fill the community service square would help him be promotable, and help him compete against them). So, Joey volunteered at the standard go-to spots; the homeless shelter, the animal shelter, he gave blood at the Red Cross as often as he could. All honorable ways to sacrifice his time, but it none of it felt like it was his, like he owned it. Well, it was just another sacrifice necessary to ensure he made SMSGT.

6 more years go by. Joey had been serving his country for 14 years now. Another reenlistment. He continued making sacrifices. He got through all the mandatory PME and started working towards a Master’s degree (his commander advised him that it was strongly recommended to have his Master’s degree while he was a MSGT; a lot of other E7’s already did). At 34, Joey was part of the old “crusty” group. He managed an entire section of 10 personnel. He got his desk job...and a pair of glasses from the eye strain of sitting at the computer all day working on those EPRs and awards. Joey was also struggling with his weight a little. Nothing to worry about right now, he was still passing his fitness tests, but his knees still ached from all those years on line. Passing the test WAS getting harder. Getting away from the desk to get in any PT was nearly impossible. His commander had an “after-hours” policy on PT; he would say, “exercise is not work, it’s a requirement. You can find the

time during your off-duty hours to exercise.” ...Yeah right. After a 12-hour day...

On Joey's 15-year service anniversary, he spent it...deployed, in Afghanistan. Joey had lost count how many times he'd been there. 15 years. Wow. Where did the time go? His commander had said to him before he left that this was the year he was going to be promoted! All his cards were lined up right, all his hard work and sacrifice was going to pay off. Making SMSgt now, would give him 5 years to make Chief, maybe 7 years if he was honored with a rare extension of two years. Then, he could retire at 42-44 years old. Between E-9 retirement pay and his TSP, he would probably only have to get some easy factory job, or something like that to supplement his retirement...some extra spending money... Ha! Ha! So close. Then, the base alarm went off. Incoming rocket. Or mortar. Whatever. Time to hit the shelter floor like so many other times. The rocket came in too close. Joey woke up in the hospital. He had been lucky, sustaining only "minor" injuries; a piece of shrapnel had hit his left arm and shattered his forearm. They had operated and stabilized him, but he was going to have to be flown back to the states for further surgeries.

Joey spent the next year and a half recovering. More minor surgeries, physical therapy, mandatory mental health therapy (to help treat possible PTSD). He was also expected to perform light duty at his unit. Joey's supervisor told him he was behind on his EPRs. He needed to get on top of that. Joey explained to his boss that typing with both hands was difficult due to the damage and slow recovery of his left arm. He'd had to do most typing one-handed. It was time consuming and frustrating. His boss rolled his eyes at him and said, "we've all been there. Suck it up." Joey did his best. He worked hard at his physical therapy. He was behind in his plan to make Chief. He was still just a MSGT. The commander passed him over for SMSGT. Gave the stripe to someone "currently more capable". Told him to focus on his recovery so he could get back at it! Finally, medical squadron personnel concurred that he was "fit for duty". However, due to the long-term injuries sustained to his left arm, he was still going to be classed as "non-deployable". "oh man", Joey thought. "This made him un-useful in the eyes of his commander. If he couldn't deploy, what point is there in being in?" Then it happened. He failed his fitness test for the first time in his career. It was his first "real" fitness test since being declared "fit for duty". During his time in physical therapy, while he was exercising, it was limited and not as high intensity as he normally exercised. His waist had gained too much circumference. He met with his supervisor. Instead of providing Joey with some encouraging words like, "it's going to be ok, we'll get through this together.", Joey was met with low-brow "fat-ass" jokes. His supervisor told him to stop being so lazy and using his arm as an excuse and get fit. Then Joey remembered his first supervisor when he was just a new 3-level; the guy must have been like 100...oh yeah - he was a technician...he said he'd been in for 36 years...wow, don't see that anymore. He was old, he didn't move really fast, but he moved with purpose. And he always had words of encouragement. When Joey was learning the nuances of safety wiring certain components, he would get it wrong the first time. That old supervisor would just come in and "snip!" the wire. Then he'd set back and simply say, "do it again Joey, but this time remember to...". That guy seemed to know everything; and everybody. He was there when Joey was first sworn in to his original unit. He called him and texted him when he was at tech school. He was there at the airport when he got back from tech school and gave him a ride home. "I guess that's not how things are done anymore", Joey thought to himself.

In the end, Joey couldn't make it. His supervisor and commander continued to put on the pressure for him to get fit and somehow "heal thysel" to get deployable again. Joey tried as hard as he could, but he had a target on his back now. He was undesirable. He ended up getting discharged due to being non-deployable and unable to pass his fitness test. He'd still get his blended service retirement, but it wasn't enough to live on. He was still young – under 40, but he had a service-related/combat-related injury. He was eligible and received VA disability as well, but it wasn't enough. He had to find a new career. Who was going to take him? Sure, he was young, but with his injuries, and also the VA had diagnosed him with early onset arthritis in his knees as well as tinnitus in both ears, who wanted to hire someone so worn out?

During Joey's TAP (transition assistance program), he met with a VA employment coordinator. She asked him if he ever thought about continuing to serve his country as a civilian. He laughed at the way she had said it. Yeah right. How's he gonna do that? She sat down with him in front of a computer. She showed him how to log in to USAJobs. He put his resume into the system. Joey found a job ad in his home state at his old base! The job ad was for a GS-9 position. It had potential to become a GS-11. The coordinator said it was a Title 5 civilian position. He applied. He got an interview. He got the job. Joey drove through the old gate he remembered driving through as a passenger so many years ago with his old "crusty" supervisor, taking him in for his first day on seasoning days. He remembered what this "100-year-old" guy said to him, "think of your career here as marathon, not a sprint. Don't get caught up in trying to reach the finish line, just enjoy the run."

As Joey walked in to his new office, there was someone waiting at his desk already. As he approached, the middle-aged, petite woman extended her hand and said, "Welcome. My name is Joanne. Has anyone told you about the Union here?" Joey smiled, "Where do I sign up?"



ACT
WORKING
THE
HILL FOR
MEMBER'S



Les Hackett with
Senator Inhofe Aide



Les Hackett with
Senator Tim Kaine Aide

5 U.S. CODE § 7121.

GRIEVANCE PROCEDURES

(a)

(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e), and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)

(1) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

(A) be fair and simple,

(B) provide for expeditious processing, and

(C) include procedures that—

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2)

(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order—

(i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

- (1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);
- (2) retirement, life insurance, or health insurance;
- (3) a suspension or removal under section 7532 of this title;
- (4) any examination, certification, or appointment; or
- (5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)

(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g)

(1) This subsection applies with respect to a prohibited personnel practice other than a prohibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected—

(A) the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

(h) Settlements and awards under this chapter shall be subject to the limitations in section 5596(b)(4) of this title.

(Added Pub. L. 95-454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1211; amended Pub. L. 103-424, § 9, Oct. 29, 1994, 108 Stat. 4365; Pub. L. 105-261, div. A, title XI, § 1104(b), Oct. 17, 1998, 112 Stat. 2142.)

I've been an active member of ACT since I returned to technician service in 2006 after a nine year break working for a succession of defense contractors. In that time I have noticed a rapid and rather depressing decline in the state of labor relations at the local level. I fear that my state is the rule

given the current climate, not the preferred "way to go" when there is a dispute between labor and management. No sir, says I. I'm still filing Unfair Labor Practice charges like it's cool.

Last year two WG-08 automotive workers at an FMS shop in



our state were loading a thing on the back of a big 'ol Army truck (I'm a Blackhawk guy by trade, so I don't know or care what these things are) and that thing slipped off of the edge of said big 'ol truck and got all bent up and mangled. Using fuzzy math and monopoly money figures, the agency came to the conclusion that the damage to the thing totaled over \$20,000. And then the agency rolled out a Financial Liability Investigation of Property Loss or as it's more affectionately called, a flipl or FLIPL, if you're one of those weird acronym lovers. At the conclusion of said flipl, after investigation by a Captain and review by three or four Colonels, the bottom line was that the two WG-08's were financially liable for the damage to the vehicle and their share (no one else was found to be at all responsible for any of the damage) was \$500 each.

rather than the exception and my conversations with brothers and sisters from other chapters bolsters this feeling.

One reason that the state of labor relations is declining stems from the composition of the current Federal Labor Relations Authority. A cursory examination of the latest FLRA decisions reveals a distinctly anti-union bias: the current panel has, in the majority, abandoned precedent in their decisions, to the detriment of union membership, and has consistently "taken the part of" management in nearly every instance since being appointed. One notable exception to these

MORAL VICTORY

Chris S. Searcy

President Chapter #83 KY



After the two affected bargaining unit members contacted their faithful union president, we filed an information request under 5 USC § 7114 (b) (4) with the agency. The agency denied the request, stating that the FLIPL process was, in and of itself, an appeal process and as such,

issues has been Authority member Ernest DuBester who has written blistering dissents in nearly all FLRA decisions since his latest appointment.

You may come to the conclusion that I feel that the Authority is,

was precluded from the negotiated grievance process. We responded that we did not agree that the FLIPL process was an appeal process because it provides no recourse for civilian employees and that even if it were, the agency was obligated to provide information requested by a union in any process



conditions of bargaining unit members, not just grievance procedures. The agency again denied our request. And they also had JAG send me an email stating that we had no leg to stand on, again because the FLIPL process was an existing appeal process and thus outside of the negotiated grievance process. Moreover, the FLIPL process precluded the representation of bargaining unit members by union officials (the regulation specifically requires that folks being hit with a FLIPL MUST represent themselves...they can consult with a JAG officer who can advise, but not represent them). We dutifully responded that the FLIPL process was not a legitimate appeal process for civilian employees of the Army and that regardless of the language of the Army Regulation, bargaining unit members are

entitled, as a matter of law, to union representation.

Ultimately, the investigating officer sent me an email stating that the process had taken far too long and that, absent some legitimate reason from me, he was going to advise the USPFO to get the government their \$500 from each of our wayward young men. I would however, have to wait until the investigating officer returned from annual training in three weeks before he would be able to review whatever response I formulated in the defense of the reckless destroyers of government equipment.

I dutifully responded that the determination of pecuniary liability was based on a poorly conducted investigation and its legally insufficient

determination that two WG-08 automotive workers were solely responsible for over \$20,000 worth of damage to government property (the regulation states that the instant appeal [request for reconsideration] of an investigation's findings can only be based upon legal error). After the investigating officer returned from annual training he responded to me that I was obviously ignorant of the FLIPL regulation because I could not respond for the destructors of government property, they must do that for themselves; thus, they lose. He also left me with the ever helpful advice that I take the time to familiarize myself with said regulation. I responded that we would go another direction with our defense of bargaining unit members. The next day I filed an Unfair Labor Practice charge

against the agency.

In the ULP filing, we alleged that the agency had violated 5 USC § 7114 (b) (4), 5 USC § 7116 (a) (1), (5) and (8). Specifically, "...the agency has willfully refused to provide information that the union needed to provide representational assistance to bargaining unit members and that as a result of this refusal, the bargaining unit members were harmed by the agency arbitrarily assigning pecuniary liability to those bargaining unit members. Further, the agency has repudiated the contract by assuming

the agency, in this case declined to settle, even though the Authority's attorneys tried to explain that they had indeed broken the law.

I have a theory as to why the agency has decided to turn from their old motto: "We will never do that which is illegal, immoral or unjust." I believe that because HRO's around the country know that there is no one currently occupying the Office of the General Counsel (OGC is the arm of the Authority that gets enforcement action for FLRA decisions through the federal courts), even when



they break the law, there is no way to legally compel them turn from their errant ways. This view is, however, short-sighted. Eventually, there will be someone sitting in the OGC position and all of these cases from the various FLRA regions across the country will be adjudicated. The chickens always come home to roost.

The temptation to seek instant gratification is strong in the vast

a level of responsibility in the instant action that is beyond the contractual obligation of bargaining unit employees and by denying the rights of the affected employees to be represented by union officials of their choosing."

On 21 December 2018, the Chicago office of the Federal Labor Relations Authority informed us that, "The Region decided that case no. CH-CA-18-0480 has merit and that the Agency violated the Statute by not providing the information

requested." The key words here are that the agency violated the statute, or to put it in plainer terms, the HRO decided to break the law.

The Chicago office later reached out to the agency in an attempt to allow them to save face by agreeing to a settlement. I've been down this road before and settlement is the preferred route when dealing with the Authority or the MSPB. However,



majority of people today. Unfortunately, if you're an official with a union that represents federal employees, instant gratification will never be your companion. Not ever. But you can't give up the fight and every once in a while you'll get a moral victory that may just carry you through.

Keep the faith.



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