ASSOCIATION OF CIVILIAN TECHNICIANS act

# THE TECHNICIAN

March - June 2019 | *Keep the Faith*

Issue #2+3 , Vol. 77

# DOUBLE ISSUE!

*Duty • Dignity • Dedication*

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*Other Photo Credit: Mike Monlezum, Florida Air National Guard*

### NATIONAL OFFICERS

**Terry Garnett**
**National President**
**tgarnett@actnat.com / 703-494-4845**

**Steve Landis**
**Executive Vice President**
**steve.landis@actnat.com / 609-970-2393**

**Tim Keesecker**
**Treasurer**
**timkeesecker@actnat.com / 402-429-4436**

**Steve Fisher**
**Secretary**
**sfisher@actnat.com / 703-899-7890**

**Gene Fuehrer**
**Northeast VP**
**gfuehrer@actnat.com / 402-416-4520**

**VACANT - Southeast Vice President**

**Robert Neimer**
**Northwest VP**
**bniemer@actnat.com / 608-843-0317**

**Rick Wrenn**
**Southwest VP**
**rwrenn@actnat.com / 267-980-1534**

### ACT NATIONAL FIELD REPRESENTATIVES

**Les Hackett - Legislation Director / Organizer**
**lhackett@actnat.com / 703-690-1330**

**Travis Perry - Northeast Region**
**tperry@actnat.com / 703-843-2153**

**VACANT - Southeast Region**

**Tom Mahoney - Central Region**
**tmahoney@actnat.com / 703-690-1330**

**Steve Olguin - Midwest Region**
**solguin@actnat.com / 703-843-2156**

**Julio Romero - Western Region**
**jromero@actnat.com / 703-843-2157**


**membership.info@actnat.com**
**Phone: 703-494-4845**
**Fax: 703 494-0961**
**www.ACTnat.com**
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## Ralph T. Price 1966 - 2019

Ralph T. Price Lebanon - Ralph T. Price, 52, passed away on Sunday, June 30, 2019 at Pinnacle Harrisburg Hospital. He was the husband of Jodi L. (Keener) Price. Born in Lebanon on October 18,1966, Ralph was a son of Catherine E. (Mullen) Price and the late Ralph C. Price. He was a 1984 graduate of Cedar Crest High School and a faithful member of Ebenezer United Methodist Church where he served as chairman on the Board of Trustees. Ralph was proud to serve in the Army National Guard for 22 years, many of which he spent as a helicopter mechanic. He was a devoted husband to Jodi for 18 years and an incredible father to his four children. Always taking an active part in their lives and supporting each of their interests over the years, Ralph even tackled the restoration of a 1966 Ford pickup truck with his son, Michael. In the days since his passing, his children recall with admiration their dad "always being there for them" - never missing Michelle's marching band performances or Michael's karate classes. Ralph was selfless with his time, spending countless hours volunteering at the VA Hospital, the local food bank, and with the Bible School at his church. He enjoyed hunting and camping, but most of all, he enjoyed family gatherings with his brothers and vacationing with his wife and kids. They traveled all over the United States so they too could experience and appreciate the country he was so proud of. Ralph was a lot of things to a lot of people, but his grandson, Brantley gave him one of his favorite titles of all - "Pa Pa" - that he would so delicately whisper, as only Brantley could do, each time he crawled up onto his lap. In addition to his wife, he is survived by four children - Sara Price, Timothy Price, and twins Michelle and Michael Price; three brothers - Michael, Thomas, and David; his grandson, Brantley Basselgia; and several nieces, nephews, and cousins. Viewing hours will be held on Thursday evening, July 4th, from 6-8pm and Friday morning July 5th, from 11-12 at Thompson Funeral Home, Inc., 126 South 9th Street, Lebanon, PA 17042. Funeral services will be held at 12 noon on Friday, July 5th and interment with full military honors will immediately follow at Covenant/Greenwood Cemetery in Lebanon. In lieu of flowers, donations in Ralph's name may be made to Disabled American Veterans (dav.org), 4219 East Trindle Road, Camp Hill, PA 17011 or to Gift of Life (donatelife.net), 867 Fishburn Road, Hershey, PA 17033. Please share your memories with the family at our online guest book at thompsonfuneralhomelebanon

# It's all about the power.

## By Les Hackett

As we continue to battle Air National Guard leadership over their ill-advised scheme of reducing the Air Guard technician force, one has to wonder what the motivations is. We know what the "party line" is, as Gen. Rice put it, "it maximizes recruiting, retention, readiness and lethality of the force". These are buzzwords that might impress young minds but for those of us who didn't just fall off the turnip truck yesterday, these words are just the familiar BS we hear coming out of senior leaderships' lips all the time. Technicians know about readiness. They live it every day. Readiness means making sure that Aircraft are ready to fly when scheduled. It means, when their fellow Guardsman pulls the trigger on that 50 Cal., it fires without jamming. It means when you press the transmit switch you get more than static.

So, how does changing an individual from federal employment status one day to military orders (AGR) the next make that individual more lethal? It won't. We know all the old argument- like AGRs are available 24/7. Really? In my experience, the AGRs didn't work anymore than technicians. Besides, you can only work folks for so long before they burn out and/ or safety becomes a factor. Furthermore, technicians are available 24/ 7 also. It's called comp time. AGR personnel have not been shown to be more proficient at their jobs than technicians. In fact, common sense would indicate that the longer an individual is on the job the more proficient they become. The AGR program is an up or out career proposition. You either continue to advance to the next military rank or become a victim of the retention process. That's why AGR folks always seem to be focused on their next rank instead of mastering the one they are in presently. Civilian technicians on the other hand can spend their whole career at one job level (WG or GS) which results in position stability and greater technical experience. Yes, technicians have to be cognizant of military advancement also but the pressure for military promotion does not seem to be as intense as it is for AGRs- probably because of the short duration of AGR careers compared to technicians. No one is calling into question the individuals work ethic who serve in the AGR program, but there is no evidence that increasing their numbers would improve readiness. Since no apparent readiness advantages have been put forward and every report and study has determined that AGR personnel are substantially more costly than technicians, the question remains… Why? I believe the answer is more control and more power over support personnel.

Prior to Congress finally giving technician's access to the MSPB/ grievance procedure when they face negative personnel actions, the TAG was basically all powerful. For decades the TAGs had free reign to leave in place terrible decisions made my management officials concerning Adverse Actions, bogus RIF procedures and other unjustified personnel actions without any meaningful due process for the individual. It was like going to court to fight a ticket only to discover the cop that issued the citation was now sitting as the judge and his family members are the jury!! Now, after Congress acted to put some fairness in the system, TAGs and other management officials must at least make an attempt to actually consider the employees defense and try to make a balanced decision. Generals don't like that. They expect, when they make a decision, that's the end of the discussion and no questions are asked. Having others questioning their decisions really gets under their skin. That's why when you file an IG complaint sometimes you're the one that becomes the target of any investigation. TAGs also resent having to deal with unions. Even though management has extensive rights in federal law to carry out their missions they are exasperated by the fact that they may have to negotiate over procedures or the negative effects their decisions may have on employees.

So this whole initiative by the ANG leadership to transform the fulltime force to mostly AGRs has nothing to do with "readiness" or "lethality" or any other "buzz word" that the Guard comes up with. It's all about power. The fact that all the reports and studies outside DoD, concerning the right mix of fulltime support point in the other direction has no bearing on the ANGs actions. The Guard's aim is to marginalize union activity by dramatically reducing the number of support workers that can be represented by unions. That way the TAGs can put their thumbs back on the scale when taking unjustified personnel actions against employees and tip the balance dramatically back in management's favor where they like it. It's all about power!!

# 2019-2020 Membership Contest Form

## ASSOCIATION OF CIVILIAN TECHNICIANS

***OFFICIAL ENTRY FORM***
**2019-2020**
**National ACT Recruiting Campaign Contest**

**Recruiter's Name:** _____

**Chapter of Record:** _____

**Home Address:** _____

**Home Phone:** _____

**Name of Person Recruited:** _____

**Date:** _____

**New Member Name:** _____

**Chapter of Record:** _____

**Home Address:** _____

**Home Phone #:** _____

**Date Recruited:** _____

**PLEASE TYPE OR PRINT FOR CLARITY.**

***To be eligible for ALL award drawings, the newly recruited members name must appear on a dues withholding roster for the Chapter reflecting pay periods through January 2020.***

**ALL MEMBERSHIP / CONTEST FORMS MUST ARRIVE AT THE NATIONAL OFFICE by January 20, 2020**

**********

***CHAPTER OFFICIALS:*** AFTER LOCAL PROCESSING REQUIREMENTS, YOU MAY FAX THIS FORM WITH A COPY OF THE 1187 and AD&D TO: (703) 494-0961 OR EMAIL TO**: membership.info@actnat.com**

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Lake Ridge, VA 22192
Tel: (703) 494-4845
Fax: (703) 494-0961
www.actnat.com

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# 2019 COLLINS AWARD


Minnesota Chapter #21


Wisconsin Chapter #26


## WISCONSIN TRAINING

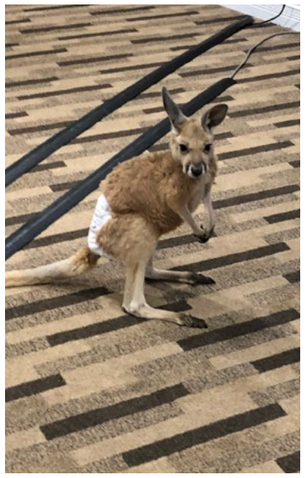
Front Row: Rob Schwerin (MadCity President), Dustin Bell (MadCity Secretary), Brandon Trinastic (Badger State 4th Vice), Gary Cywinski (1st Vice Badger State), Alex Breyer (3rd Vice Badger State)

Back Row: Tom Mahoney, John Schueman (MadCity Vice President) Jason Lacher (Bader State President), Dan Johannes ( MadCity Treasurer), Nic Brandstrom (2nd Vice Badger State) James Johnson (MadCity Steward), Mike Post (MadCity Steward)

## PENNSYLVANIA OFFICERS AND TAG

Left to Right: PA State Council Treasurer Pat Straka, ACT Field Rep Travis Perry, PA State Council VP Nate Sherk, PA State Chairman Marc Hunsberger, PA TAG Tony Carrelli, ACT National President Terry Garnett, Lt. Col. Munch, PA State Council Vice Chair Admin Jo Martz

# MISSOURI TRAINING



Front L-R: Kaarl Brown, Bryce Tellman, Dakota Crocker, Kennrik Nelson, Rob Bailey, Shannon Andrews, James Foley, Marc Johannes  Back L-R Troy Hoskins, Brian Field, Kevin Connolly, Jeffery Osborn, Brock Schuld, Stephen Capkovic, Tony Borgstadt, Eric Smith, Charles Beebe, Brayon DeLisser, Patrick Wimsatt, Tom Mahoney

**Central Region Round Up**

The first 5 months of 2019 flew by as I assisted Wisconsin, Florida, and Iowa in preparing for upcoming negotiations. The number of attendees at the Illinois and Missouri Officer and Steward training was great. All at the training came prepared to engage and did engage. I finally (17 months 11 states) have visited every state in the Central Region. Additionally, the Region is sending letters to Senate and House Members asking support on bills (House Resolution (H.R.) 613 and Senate (S) Bill 164) that giving employee the right to choose TRI CARE over FEHB. At the time of the rally there were 9 cosponsors since the Rally over 80. Each Chapter has the boiler plate letter waiting for you to email to you. If this bill passes it is just one example of how your Chapter and ACT National work for our employees.  I just received an update on membership numbers and the Region is doing great, we have grown this quarter and just received word we will be adding more for the next reporting period. A chapter was contacted by members of another Federal Employee Union wishing to choose ACT as their Exclusive Representative. We have started the process and hopefully in the next addition of The Technician we will have them on board. Remember to visit ACT on facebook and log on to actant.com for the latest and greatest resources.





# IOWA TRAINING


**Heartland Chapter # 101, Des Moines, Iowa Training**

L/R: Geoffrey Bennett, Tom Mahoney, Carol O'Roake, Rusty Horstman, Robert Haspels

# ILLINOIS TRAINING

**ASSOCIATION OF CIVILIAN TECHNICIANS**

**Terry W. Garnett**
***National President***

May 7, 2019

LTG L. Scott Rice, Director
Air National Guard
National Guard Bureau
1000 Air Force Pentagon 4E126
Washington DC 20330-1000

Re: Military Technician/Active Guard Reserve (AGR) Realignment

Dear General Rice:

I appreciate your March 14, 2019 memorandum, which said that—because the realignment is "strictly voluntary"—where "a Military Technician declines to participate, no further action will be taken against the individual or their position"; the "54" may "substitute positions throughout their organization"; and there is "flexibility to move the realignment to other units."

Your memorandum, however, came too late. Your August 2018 message set April 1, 2019, as the effective date of the realignment; and, before your March 14 memorandum clarified the meaning of "strictly voluntary," many of the "54" already had implemented the realignment based on a very different interpretation of that phrase.

Tennessee illustrates the point. As the accompanying PowerPoint presentation and April 15, 2019, memorandum show, Tennessee managers told technicians that, effective April 1, technician positions designated for realignment would no longer have technician program funding; that any technicians in these positions who did not apply for and obtain AGR appointments would be required to submit resumes for management directed reassignment; and that, if needed, VERA/VSIP authority could be sought for downsizing and reorganizing the technician force. (Other states, including Alaska and California, expressly told technicians that a reduction in force would occur.) Tennessee managers told technicians that, in a few years, technicians and Title 5 employees would be reduced to 35% of the force, while AGRs would comprise the other 65%. They said that technicians who took AGR tours might not have technician positions to which they could return under USERRA.

Having provided technicians this information—which sharply conflicts with your March 14 memorandum—Tennessee managers afforded technicians occupying the realigned positions two weeks to apply for AGR appointments.

Even after March 14, Tennessee managers have continued to maintain that their implementation of the realignment was proper. The April 15 memorandum does not acknowledge that any information provided to technicians was misleading—though the PowerPoint presentation is flatly contrary to your March 14 memorandum. The April 15

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**ASSOCIATION OF CIVILIAN TECHNICIANS**

**Terry W. Garnett**
***National President***

memorandum asserts that, because technicians could obtain AGR appointments only by applying, this by itself means the realignment process was "strictly voluntary"—irrespective of the information provided to technicians to induce them to apply.

The position of Tennessee managers is incompatible with the intent of Congress and your March 14 memorandum. Absent further direction from you, proper implementation of your memorandum is doubtful.

This doubt, moreover, is deepened by evidence that the National Guard Bureau (NGB), itself, not just Tennessee or other states, is acting contrary to your March 14 memorandum. The accompanying April 16, 2019, memorandum by MG Dawne L. Deskins, Director, Manpower and Personnel, NGB, requests "87 VSIP allocations" so that technicians may "request VSIP because of the loss of their position due to the realignment of their position" to AGR.

This action by MG Deskins, like implementation in Tennessee, is flatly contrary to your March 14 memorandum. Under your memorandum, the positions of technicians who do not take AGR appointments are to remain technician positions, occupied by their current technician occupants. Yet the April 16 Deskins memorandum—issued a month after your March 14 memorandum—states that technicians should be offered VSIP "because of the loss of their position due to the realignment of their position" to AGR.

Your house is in disarray. Corrective action is necessary. I request that you inform MG Deskins that her April 16 memorandum is contrary to your March 14 memorandum.

More important, I also request that you issue a second memorandum, requiring the "54" to send a written notice to every technician who elected an AGR tour. This memorandum would require that the notices (a) correct any previously provided information that is inconsistent with your March 14 memorandum; (b) invite technicians to cancel their AGR tours and return to their technician positions, if they so desire; and (c) assure them that, if they so return, their positions will continue to be funded, and no command retribution will occur.

There is no legal barrier to this action—even if all technicians might cancel their AGR tours and return to their technician positions. The statutory technician end strength is a floor; the AGR end strength is a cap. Technician and AGR funding can be adjusted to match the force mix that results from technicians' *genuinely* voluntary choices.

Sincerely,

Terry W. Garnett, National President
Association of Civilian Technicians

cc: Chair and Ranking Member, House and Senate Armed Services Committees

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## CA VIOLATION OF RICE MEMO

1. The attached CA ANG 16 April HRO and 19 April LRS memos show that implementation of the AGR realignment in CA has violated, and continues to violate, LTG Rice's March 14 memorandum--in much the same way that my April 25 email to you showed that implementation in TN has violated, and continues to violate, the Rice memo.

2. LTG Rice's March 14 memorandum states that if "a Military Technician declines to participate" in the realignment to AGR, "no further action will be taken against the individual or their position."

3. The 16 April CA HRO memorandum, however, states: "At this time, a Reduction in Force (RIF) will not be necessary to complete the Technician to AGR Realignment. Should a technician choose not to participate in the AGR Realignment, the HRO will work with the Wing to create an alternative resolution.

4. The 16 April CA HRO memorandum violates the Rice memorandum. Under the Rice memorandum, the realignment never justifies a RIF. Under the Rice memorandum, there is no "alternate resolution" if a technician declines to participate. Rather, there is one, and only one, outcome. The technician remains in the technician's same position. That position is not realigned.

5. The 19 April CA LRS memorandum states, "Last week, we provided a list of voluntary reassignments which captured those technicians who elected to reassign to an unaffected technician position." These reassignments violate the Rice memorandum. Under the Rice memorandum, if a technician declines to participate, then that technician's position must be "unaffected." Telling a technician that the technician's position has been realigned—that the realignment of the position is a done deal that cannot be undone—and then offering the technician reassignment to an "unaffected" position violates the Rice memorandum. It violates the memorandum's requirement that the realignment be "strictly voluntary." Under the Rice memorandum, if the occupant of a technician position that initially is proposed for realignment declines to participate, then the result mandated by the Rice memorandum is that that position is not realigned and the technician stays in that position.

6. The 19 April CA LRS memorandum states, "The AGR conversion implementation date of 1 April 2019 was not postponed. The resources were switched from technician to AGR effective 1 April 2019 and we are currently in the process of filling our AGR positions. In that manner, it has been implemented." For the reasons stated above, "that manner" violates the Rice memorandum.

7. To comply with the Rice memorandum, the CA ANG must undo its violations of that memorandum. The ANG must send a written notice to all technicians who either accepted AGR tours or were reassigned to "unaffected" positions telling them that they have the right to cancel their AGR tours or reassignments and return to their previous technician positions; and that if they choose to do this, their positions will not be realigned to AGR and will, instead, continue to be funded by technician program funding, with no RIF or any other adverse command action.

8. Please advise ASAP whether NGB will order CA officials to take the action stated in ¶ 7.





DEPARTMENT OF THE ARMY AND THE AIR FORCE
JOINT FORCE HEADQUARTERS
DIRECTORATE FOR HUMAN RESOURCES
9800 GOETHE ROAD BOX 37
SACRAMENTO, CALIFORNIA 95826-9101

NGCA-JSD-MP 16 April 2019

MEMORANDUM FOR All Military Technicians and Employees of the California Air National Guard (ANG)

SUBJECT: ANG Military Technician to Active Guard Reserve (AGR) Realignment Update

1. References:

a. Memorandum, NGB/CF, 14 March 2019, subject: Military Technician/Active Guard Reserve (AGR) Realignment.

b. Memorandum, Human Resources Office (HRO), 31 December 2018, subject: General Notice of a Realignment of ANG Military Technician Authorizations to Active Guard Reserve (AGR).

2. This notice serves as an update to the General Notice dated 31 December 2019.

3. The Technician to AGR Realignment is underway. We are in the process of reviewing the selections from the AGR Vacancy Announcements (VAs) which posted in December of 2018 and closed in February of this year. We will continue the plan to hire qualified AGRs from VAs while ensuring the continued employment of our valuable federal technicians.

4. At this time, a Reduction in Force (RIF) will not be necessary to complete the Technician to AGR Realignment. Should a technician choose not to participate in the AGR Realignment, the HRO will work with the Wing to create an alternative resolution to meet the AGR Realignment goals while ensuring no harm to the technician.

5. If you have any questions, contact Nicole Arong at CAGNET 63576, DSN 466-3576 or (916) 854-3576.

BEEGLES.BARBARA.JEAN.1153328613 Digitally signed by BEEGLES.BARBARA.JEAN.1153328613 Date: 2019.04.16 09:48:46 -07'00'

BARBARA J. BEEGLES
LTC, LG, CA ARNG
Director, Human Resources Office

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# FY19 ANG
# Dual Status Technician to AGR Realignment Briefing

JFHQ-HRO

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## How did we get here?

- ❑ ANG, AF, and OSD leadership expect this realignment to provide measurable improvements primarily in terms of our units' C-ratings and with recruiting and retention of both fulltime and DSG military members

- ❑ FAMs placed the resources where they anticipated having the greatest impact on readiness/lethality of the force
  - We *must* maintain program integrity on the UMD
  - Migrating resources away from the PEC in which they're earned undermines NGB's credibility and rationale for future resource realignments – changes outside of PEC must have strong justification and require ATAG approval

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## How did we get here?

- ❑ NGB developed the distribution methodology for the Technician to AGR realignment based on FAM input along these guiding principles:

- ❑ Military readiness (in compliance with SECDEF's National Defense Strategy guidance & SECAF's C1/C2 Goals),
  - Critical AFSCs,
  - Location factors, and
  - Special military mission needs

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## TNANG Impact

164th AW = 32 Positions to be realigned

118th WG = 35 Positions to be realigned

134th ARW = 39 Positions to be realigned

State Total = 106

***All realignments effective 1 April 2019**

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# Realignment Big Picture

- ❑ Realigning 14% FY19
  - 10% every year after until we reach our end goal

Projected Force End Strength

- ❑ 2/3 AGR
- ❑ 1/3 Technician/Title 5

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# Execution Method

HRO Approach will be in 3 phases:

Phase 1 = Identification and advertising of new AGR positions

Phase 2 = Reassign remaining technicians & DSGs

Phase 3 = If needed, request Voluntary Early Retirement Authority (VERA) and/or Voluntary Separation Incentive Payments (VSIP)

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# Controlled Grade Increases

1 – Col
8 – Lt Col
7 – Major
2 – CMSgt
7 – SMSgt

- ❑ Controlled Grade targets are inclusive of the FY19 Tech to AGR impact effective 1 April 2019.
- ❑ CGs are recalculated annually based on upcoming FY 4th Quarter data
- ❑ NGB does not anticipate additional CG growth during FY19

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# Phase I

- ❑ Receive valid UMDs from NGB
- ❑ All T32 DS Technician advertisements will be posted as Tenure 3 (Indef's)
- ❑ Advertise AGR positions identified as being converted from Technician IAW ANGI 36-101
  - Craft Area of Consideration which will be open only to onboard technicians who hold a qualified (3-level) AFSC associated with the identified position
  - Bid position for 2 Weeks Only
  - Effective date of AGR orders will be 1 April 2019

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# Phase I… continued

- Technicians entering onto AGR orders will have USERRA rights but as a courtesy, they will be notified the purpose of this realignment is to reduce the number of Technician positions in our force (Subsequently, there is a strong possibility there may not be positions available to return to)
  - AGR orders will be initiated for 3 years







# Advertising & Hiring

- ❑ Wings submit ML-337 Spreadsheet; (Request for Fulltime Military Vacancy Announcement) **In Priority Sequence
- ❑ AGR Manager creates job announcement
- ❑ Unit reviews announcement for accuracy
- ❑ Upon approval, job will post for 2 weeks *Goal = 4 per wing / 12 per week
  - On board Military Technicians w/ AFSC & 3-Skill Level

  *Vacant positions are open to all members in the local area*
- ❑ 24-72 hrs after closeout date, AGR Manager prepares hiring certificate
- ❑ Wings will have 5 business days to interview and select











# Advertising & Hiring… continued

- ❑ HRO will certify the selection and notify wings of approval
- ❑ Wing HRO Remote will assist/initiate the following:
  - ETP for any member unable to obtain 20 yrs TAFMS (Needs TAG Approval)
  - Coordinate/Assist with Controlled Grade requests (if applicable)
  - Work with Medical to coordinate AGR Physical requirements
  - Create HRO-1 (AGR Tour Request)
  - Create Order in AROWS
- ❑ Provide New Employee Orientation Briefing
  - AGR Manager will assist







# Phase II

- ❑ Once the AGR positions have been filled, HRO will assess remaining technicians who are impacted but have not been realigned
- ❑ Remaining technicians affected by the realignment must submit an updated resume
- ❑ Management-Directed Reassignments:
  - Review available like positions for reassignment
  - Review any other available position at the current location for reassignment

**NOTE: Excess DSGs in positions realigned will need to be moved via 2096 action

# Phase III

Consider the following if approved:

- ❑ Voluntary Early Retirement Authority (VERA)
- ❑ Voluntary Separation Incentive Payments (VSIP)

These programs allow federal employees in organizations that are reorganizing or downsizing to offer early outs





# AGR Benefits

- ❑ Earn 2.5 days leave per month = 30 days paid leave per year
- ❑ Earn Passes
- ❑ Non-Chargeable Leave
  - Convalescent
  - Maternity (12 Weeks)
  - Paternity Leave (21 days)
- ❑ Pay Benefits; BAH (Basic Housing Allowance) & BAS (Basic Allowance for Subsistence)
- ❑ Only your base pay is taxed
- ❑ FREE Medical & Dental Care (AGR Member)
  - FREE Medical for Dependents registered in DEERs
  - Affordable Dental for Dependents registered in DEERs (United Concordia)









# AGR Benefits… continued

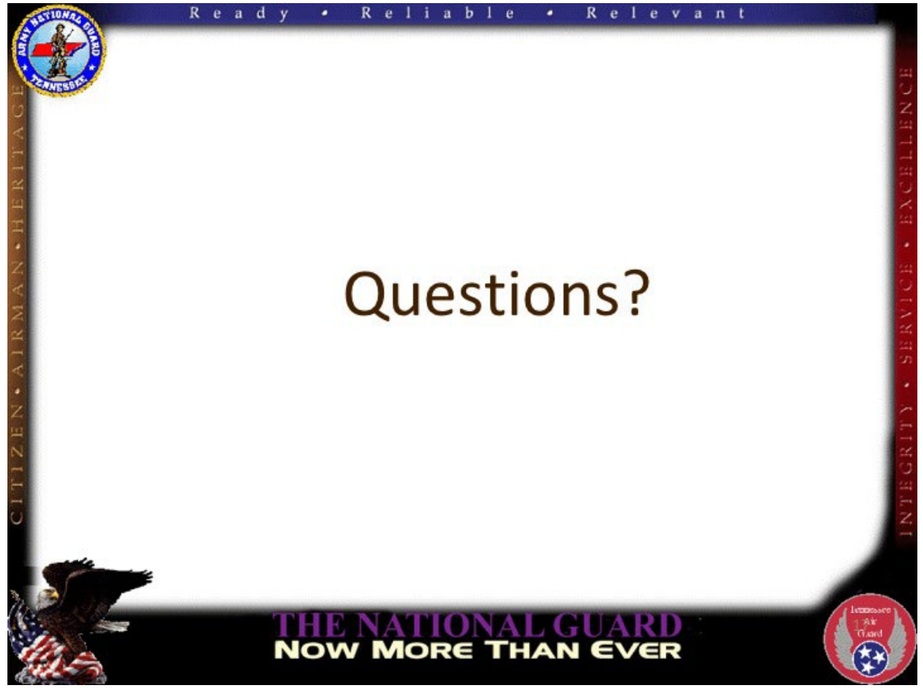
- ❑ No tax on vehicle purchases (State of Tennessee)
- ❑ Entitled to use Servicemember Civil Relief Act (SCRA)
  - 6% Interest rate Cap (can be as low as 3%)
  - Protection against default judgements
  - Non-judicial foreclosures
  - Installment contracts and repossessions
  - Residential (apartment) lease terminations
- ❑ VA Home Loan eligible
- ❑ Exceptional Family Member Program (EFMP)
  - Assists Airman who have a family mbr with Special Needs
- ❑ Active Duty Retirement (20 yrs TAFMS)





# AGR Benefits… continued

- ❑ Education Benefits
  - Federal Tuition Assistance ($4,500 per year)
  - Montgomery GI Bill Chapter 30 of 38 USC
  - Post 9/11 Education Assistance Act
- ❑ Earn Veteran Status
  - Use of VA Hospital
  - Free burial benefits









Rodney Cotton — State Chairman
Myron DeBerry — State Vice-Chairman
State Treasurer
Martin Leavell — State Secretary

**Date:** 8 April 2019

**To:** Mr. Scott Villeneuve, TNNGB HRO
3041 Sidco Dr
Nashville, TN 37204

**Re:** LTG Rice Memo

**Good Day,**

**The Labor Organization (LO) has several questions regarding LTG Rice's Memo dated 14 March 2019.**

1. **Why were technicians told that positions must convert at the Town Hall Meetings that were held at the various locations (Town Hall meeting slides 4, 5, 7 and 13)?**
2. **Why were commanders told that AGR positions could not be traded between units?**
3. **What is being done regarding those members who were given misleading information regarding positions?**
4. **How many AGR positions were advertised at a stripe higher than E-5 placing incumbent members in shops in a lower position for advancement?**
5. **Technicians who have already elected for AGR tours did so with the understanding that their technician positions were being eliminated. According to LTG Rice's memo, the information given is untrue. Therefore, all individuals who elected to opt for an AGR tour or to find another civilian job, government or otherwise, should be afforded the choice to return to their former civilian status at their former pay with the understanding that the action to become an AGR or find another position should be considered unnecessary, null and void based on the referenced memo. Is management willing to make this offer and return those individuals electing to do so?**
6. **How long would an individual need to wait to be made whole in such a situation?**

**The LO desires to meet with the TAG to discuss the items identified herein.**

**Formally Submitted,**

**Martin Leavell, State Secretary**
**Association of Civilian Technicians,**
**Tennessee State Council**

_____
**Scott Villeneuve, Receipt Acknowledgement/ Date**

**CC:** **Rodney Cotton, State Chairman**
**Association of Civilian Technicians, Tennessee State Council**

**Myron Deberry, State Vice-Chairman**
**Association of Civilian Technicians, Tennessee State Council**



**DEPARTMENTS OF THE ARMY AND THE AIR FORCE**
TENNESSEE NATIONAL GUARD
HOUSTON BARRACKS, P.O. BOX 41502
NASHVILLE, TENNESSEE 37204-1502

NGTN-HRO-LR 15 April 2019

MEMORANDUM FOR Mr. Martin Leavell, State Secretary, Association of Civilian Technicians, Tennessee State Council

SUBJECT: Lt Gen Rice Memo

1. In response to your inquiry regarding the Air National Guard AGR Realignment, management has submitted the following response to your numbered inquiries:

a. Each Wing had a specific number of military positions that would realign to AGR effective 1 April 2019. At the same time, that same number of technician positions would no longer have funding available effective 1 April 2019.

b. Leadership across the state had the option to move positions through the MCR process and all three Wing's took advantage of this process for the realignment.

c. Leadership across the state was advised and encouraged to have discussions with all there technicians regarding the AGR realignment to get a feel for those that were not interested in becoming an AGR or perhaps could not qualify for an AGR position. To address your concern more completely, please provide specific example(s) of misleading information provided by management.

d. Please clarify or provide a specific example regarding this inquiry.

e. All AGR positions were advertised, so an employee's election to apply for a position was strictly voluntary. The grade of the position was advertised as well so that all members knew up front of the grade restrictions.

f. Since, the individual employee voluntarily left their technician position to pursue other job options, it is not the agency's responsibility to "make this situation whole"? Depending upon the employee's election to request Leave without Pay (LWOP) to accept an AGR tour, those employee's rights are protected for reinstatement to a position with the same seniority, status and pay under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The employee must elect this option to resign their AGR position and reinstate as a Title 32 Federal technician.

2. To date, the HRO-AGR office has not received any questions or concerns, as identified by the LO. Please ask your members to contact, CMSgt Shantel Bolton, 615-313-3039, shantel.r.bolton.mil@mail.mil, so that we are provided the opportunity to correct their concerns.

3. Point of contact is the undersigned at (615)313-3029 (O) or scott.l.villeneuve.mil@mail.mil.

VILLENEUVE.SCOTT.LINDEN.1027007119 Digitally signed by VILLENEUVE.SCOTT.LINDEN.1027007119 Date: 2019.04.15 11:52:14 -05'00'

SCOTT L. VILLENEUVE
Tennessee National Guard
Labor Relations Specialist

NATIONAL GUARD BUREAU
111 SOUTH GEORGE MASON DRIVE
ARLINGTON VA 22204-1382

APR 16 2019

MEMORANDUM FOR DEPUTY CHIEF OF STAFF FOR MANPOWER, PERSONNEL AND SERVICES

Subject: FY2019 Voluntary Separation Incentive Pay (VSIP) Allocations

Reference: (a) SAF/MR Memorandum, "Voluntary Early Retirement Authority and Voluntary Separation Incentive Pay Authority", May 30, 2018
(b) NGB/A1 E-Mail, "FY19 Military Technician Realignment AGR", 13 September 2018

1. The purpose of this memorandum is to request a total of 87 VSIP allocations from the Department of the Air Force in accordance with (IAW) reference (a). Thes allocations would be used to allow Title 32 Dual Status Air National Guard Military Technicians to request VSIP because of the loss of their position due to the realignment of their position from a Title 32 Dual Status position to an Active Guard Reserve (AGR) position. No funding is required for these allocations as the states fund VSIP approvals.

2. Per reference (b), "State HRO concurrence and TAG approval, states may realign a Mil Tech to an AGR position without advertising; members must meet the current AGR Accession requirements outlined in ANGI 36-101, Chapter 5. This email is your waiver authority to ANGI 36-101, Paragraph 4.1. and is only applicable in the FY19 Military Technician Realignment to AGR initiative." The e-mail further states, "The HRO will ensure vacant or projected vacant UMD AGR positions are advertised and filled within the State's allocated RA and controlled grade ceilings." Additonally, the "realignment from Mil Tech to AGR is strictly voluntary and the individual must be fully-qualified for the AGR position; does not drive a retraining requirement."

3. Due to the ongoing determination of positions that need to be realigned, I request these allocations be valid through 30 September 2019.

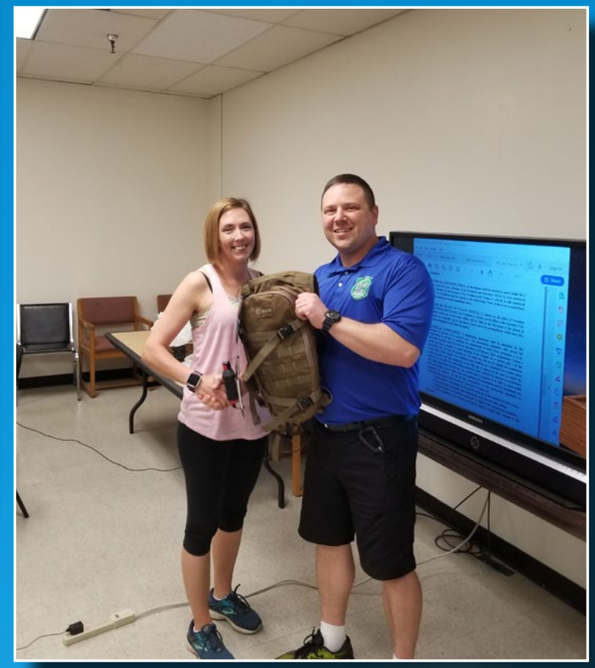
4. Point of contact is Ms. Angela Mullins; J1 TNS; 703-607-5423.

DAWNE L. DESKINS
Major General, USAF
Director, Manpower and Personnel
National Guard Bureau



# WASHINGTON RAINIER CHAPTER MEETING

Justin Gillaspie of CSMS



Dawn Lagrou of USPFO

## RAFFLE

Chapter President Matthew Carpenter presenting prizes to members.

# SEVERE WEATHER

*Travis Perry ACT Field Rep Northeast*

In March of 2017, Stewart ANGB and the surrounding area experienced an unusually severe winter storm. Snow totals measured up to 24" in a 24 – 36 hour period. Located just south of Poughkeepsie, NY the area doesn't typically get this much snow in such a short period of time. The governor and county officials declared a state of emergency on 13 March. The county executive order declared roads unsafe to travel and prohibited non-essential vehicles from traveling. Stewart ANGB however, was to remain open.

The storm was predicted early and many supervisors told their employees that leave would be granted if employees felt that travel would be unsafe. Some employees accepted that offer based on their individual locations and distances driven. The storm hit on 14 March and buried Stewart ANGB and the surrounding areas. Stewart called for assistance from other guard units for snow removal. Flying was cancelled.

In April, after reviewing the NY State Labor-Management Relations Agreement (LMRA), the employees discovered that per the contract, they may be entitled to have their annual leave restored and be granted administrative leave in place of their annual leave. Article 15, Inclement Weather Policy, paragraph 5 states:

"5. If tardiness or early release periods have not been authorized and the immediate area where a technician resides is such that travel is prohibited within that county or the installation where the technician is assigned is closed, the technician may request excused absence which will be reviewed for approval/disapproval at this headquarters by MNHF. The request must be forwarded through command channels and contain at a minimum the following information:

a. Technicians name/work site location
b. Title/grade of position
c. Scheduled hours of work/shift
d. Home of record (including county and zip code)
e. Primary/alternate routes from home of record to work site
f. Name/phone number of immediate supervisor
g. Statement of circumstances"

Through the local chapter (Chapter 51 Stewart Chapter) the employees filed their request. The request was denied by the HRO on 17 April stating that, "per TPR 630 15-3, severe weather does not necessitate administrative closing. Employees may use any form of appropriate leave when they are prevented from arriving on time, need to leave early to avoid hazardous conditions, or could not return home if they report to work."





On 2 May, the ACT NY State Council filed a verbal grievance. The grievance asked the HRO to review the contract, specifically Article 15, paragraph 5 as well as the Orange County Order closing the roads to non-essential personnel. The verbal grievance asked the HRO to reconsider the decision denying restoration of leave.

A significant amount of time went by due to procedural issues at the Wing (not mention the agency lost the grievance packages a couple of times). Finally, after submitting the grievance package directly to the HRO, on 11 May 2018 the agency responded. Again, they denied the request for restoration of leave. This time, they based their reasoning on another paragraph within the contract; Article 15, paragraph 2. Paragraph 2 states:

"All technicians are to presume their work site will be open each regular workday regardless of weather conditions or public announcements made by private organizations or other government agencies. Each activity will remain open in anticipation of providing support to the affected areas of the state. Each Wing/MACOM Command will determine the minimum essential staff required to respond when called." As you can see, they never addressed the paragraph ACT used, instead looked for a loophole elsewhere in TPRs and the contract.

At this point, I think it's important to note that in December of 2016, the National Defense Authorization Act (NDAA) for FY 2017 was signed. The NDAA included changes to 5 U.S.C. § 6329 Administrative Leave. The changes broke §6329 into four parts; §6329 – Disabled veteran leave, §6329a. Administrative leave, §6329b. Investigative leave and notice leave, and §6329c. Weather and safety leave.

5 U.S.C. § 6329c. (b) states:
"(b) Leave for Weather and Safety Issues. – An agency may approve the provision of leave under this section to an employee or a group of employees without loss of or reduction in the pay of the employee or employees, leave to which the employee or employees are otherwise entitled, or credit to the employee or employees for time or service only if the employee or group of employees is prevented from safely traveling to or performing work at an approved location due to-

(1) An act of God;
(2) A terrorist attack; or
(3) Another condition that prevents the employee or group of employees from safely traveling to or performing work at an approved location."

The change to the U.S.C. sounds remarkably similar to the contract language. The NY LMRA was signed by all parties in March of 2016. While the changes to the law were a positive change, OPM and NGB had not issued policy direction on how to apply the law at the time of the March 2017 blizzard. The changes were not widely known until later in the year.

On 12 June 2018, the ACT NY filed a formal, written grievance. Once again, ACT NY identified Article 15, paragraph 5 as their argument. Once again, the agency denied leave restoration and administrative leave use. On 19 July the agency responded, attempting to use the NY National Guards' status as a "first responder" and 5 USC § 7106 (a)(2)(D), which states:

"(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency-

(2) in accordance with applicable laws-

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies."

The HRO continued further stating that technicians are afforded a liberal leave policy with supervisor approval provided the agency is able to fulfill its mission without their presence.

NY ACT decided this was an issue that needed further pressing. The agency continued to deny its own capability to provide administrative leave for its employees which would relieve them from having to use their own annual leave. Annual leave is leave is meant for the employee to enjoy rest and relaxation time away from work or to take care of personal business, when the employee determines it is necessary (and through proper scheduling). Annual leave was not intended to be used when an employee can't physically make it to work because of an adverse weather event. In August 2018, NY ACT invoked Arbitration on the matter. By September 2018, the list of Arbitrators was given to ACT and the agency. A hearing was set for November 28.

Pre-hearing Briefs from ACT and the agency were submitted on 14 November.

The agency's pre-hearing brief expectedly once again argued that all employees are expected to presume their worksite is open even during times of adverse weather conditions and are expected to report to work. The agency further pontificated that the 105th Airlift Wing did not announce the base's closure and anticipated its members and employees would arrive at their respective work sites in order to provide emergency services and maintain the operation of the base. They continued stating that large numbers of the agency's employees were transitioned into a military status and directed to provide emergency services. Finally, they went on to say that some employees elected to, or were unable to make it to the base. Through the Union, those employees requested their absence be excused and while the contract states that they have an opportunity to make such a request, it does not specify that the agency must approve such requests.

ACT's pre-hearing brief countered previous and current arguments. On the argument that many employees were transitioned to a military status to respond to the storm, we countered that none of the employees involved with the grievance were "activated". We argued that commanders were to identify "essential" personnel who may be "called"; paragraph 2 of Article 15 states, "each Wing/MAJCOM Command will determine the minimum essential staff required to respond when called". While employees must be available to be called, not everyone is required to work, and not everyone is ineligible for excused absence. On the point of management's rights, specifically, 5 U.S.C. §7106 (a)(2)(D), we argued that while "essential" employees may be needed during an emergency, there was no impingement on agency operations by granting administrative leave after the emergency to restore a "non-essential" employees leave (under the assumption that the employees that were granted annual leave prior to the storm were, in fact, "non-essential"). Further, the "liberal leave" policy for those that did not wish to travel in inclement weather appears to only be "liberal" if the leave approved is the employee's leave. This thought process is contrary to the changes, earlier stated, in 5 U.S.C. §6329c. Congress recognized that there may be instances when employees – through no fault of their own, are unable to travel to or do their work and they should not suffer the loss of accrued personal leave for circumstances out of their control. Finally, our opinion was that the agency's decision to deny administrative leave and personal leave restoration is arbitrary and capricious.

During the hearing on 28 November, the arbitrator heard arguments from both sides and several witnesses were called to provide testimony.

The agency's argument focused again on Article 15, paragraph 2; that technicians are to presume their work site will be open each regular workday regardless of weather conditions and that each Wing/MACOM Command will determine the minimum essential staff required to respond when called. They argued that the agency determines "who" the minimum essential staff will be and employees should presume they are considered essential staff. They argued that the agency may need to call upon anyone prior to, during and after a severe weather event which is another reason employees should report to work.

ACT's arguments centered primarily around the fact that the agency disregarded its own capability to grant administrative leave in accordance with the contract and 5 U.S.C. § 6329c. We countered that while they denied employees administrative leave during circumstances which the Article in the contract and the law was designed for, the agency routinely grants administrative leave to employees attending National Guard Association conferences. We argued that if the Wing identifies essential employees, but doesn't inform the employees they are on "the list", how can an employee prepare and what good is the list? We argued that regardless of status – technician, AGR, or traditional, if there was a call to respond to the emergency, all personnel were to respond. That response would be regardless of their status of leave or whether they were technician, AGR or traditional. If an employee, regardless of the type of leave they were on, if called to come to work, would have to come. However, none of the employees associated with this grievance actually received a call or were required to respond to any sort of emergency. The agency chose to determine these employees were basically, non-essential. This argument referred us back to the original argument and question; if the agency was willing to allow an employee to expend their own personal leave due to a severe weather event,



Cover Story

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why wouldn't they allow for restoration of that personal leave and instate administrative leave in its place as both the contract and the statute clearly allows for?

The hearing closed and the Arbitrator determined that closing arguments would be given in the form of post-hearing briefs. She set the date post-hearing briefs were due as 18 January 2019.

The agency based their post-hearing arguments on the same arguments again; technicians are to presume their work site is open, etc., etc.; it's the mission of the NY National Guard to respond to emergencies when activated by the Governor; the Wing does not need to inform the member ahead of time that they are "essential"; the contract states "may" request excused absence and "may" be approved or disapproved, and in this case it was disapproved; the agency met its obligations by approving "liberal" leave.

ACT again countered the agency's argument. We argued that the agency made up a phrase that is clearly no where in the contract: "report unless excused or declared non-essential". What is actually in the contract states, "each Wing/MACOM Command will determine the minimum essential staff required ***to respond when called***." By changing the language and/or misinterpreting the language, the agency is attempting to rewrite the contract. It is apparent the agency never determined the minimal essential staff and none of the grievants were called. We argued that the CBA requires that approval or disapproval of an excused absence request be based on review of the request to determine whether if provides information establishing criteria for approval. Approval or disapproval must be based on a good-faith determination of the issue. The decision cannot be arbitrary and capricious. The grievants' excused absence requests met criteria for approval, therefore the agency's decision was arbitrary and capricious. Finally, we argued that the agency's position is contrary to public policy. 5 U.S.C. §6329c allows for the agency to approve administrative leave during severe weather events like the blizzard Stewart ANGB and the surrounding areas experienced. It is not in the public interest for the agency to encourage dangerous travel by non-essential employees by imposing a penalty – loss of annual leave – on employees.

The Arbitrator's decision came, finally, on 13 May 2019. The Arbitrator ruled in our favor, awarding the grievants credit on their personal leave and replacing it with administrative leave. Rather than summing up the decision, please read it for yourself on the following pages.

This was a long, hard fought battle. As you can see, percivierance and patience are key to winning. Many times, management will drag things out simply to wear you down. Be strong. Keep your chin up and know that you are fighting to help your fellow brothers and sisters.

I'd like to acknowledge the hard work of Chapter 51, Stewart Chapter, the NY State Council, Les Hackett, and Dan Schember. This win would not have been possible if not for these folks.

*This article is only a summary of the hard work put in to make this arbitration successful. If you would like further details or copies of the pre or post-hearing briefs themselves, please contact me at tperry@actnat.com.



**FEDERAL MEDIATION AND CONCILIATION SERVICE**

**In the Matter of the Arbitration between**

**Association of Civil Technicians**

**and**

**New York National Guard**

**OPINION AND AWARD**

**FMCS Case #: 180829-07922**

**BEFORE:** Amy Lynne Itzla, Esq.
Arbitrator

**APPEARANCES:**

For the Employer: Major Nestor David Berge, Advocate
Terri Brew, Labor Relations Specialist
Colonel Charles Hutson
Lieutenant Colonel Michelle M. Buonome, Deputy HRO
Master Sergeant Renae M. Turner, MXG Budget Analyst

For the Union: Les Hackett, ACT Legislative Director, Advocate
Travis Perry, Northeast Regional Representative
Klaus Jonietz, II, ACT President, Chapter 51
James A. Davison, Production Controller/NYSACT Treasurer

**HEARING DATE:** November 28, 2018

The Association of Civil Technicians ("the Union" or "ACT") and the New York National Guard ("the Agency") are parties to a Labor/Management Agreement which serves as their collective bargaining agreement ("the CBA"). The CBA provides for the arbitration of unresolved grievances. In accordance, therewith, this Arbitrator was designated by the Federal Mediation and Conciliation Service to hear and decide this matter. The parties submitted pre-hearing briefs on November 14, 2018. The parties appeared before the undersigned for a hearing on November 28, 2018.

The parties had a full and fair opportunity to present evidence and argument, to engage in the examination and cross-examination of sworn witnesses, and to otherwise support their respective positions. A court reporter was present at the hearing to make a stenographic record and a transcript was provided to the parties and to the Arbitrator. Post-hearing briefs were submitted by the parties on January 18, 2019.

## RELEVANT CONTRACT PROVISION

### ARTICLE 15

### INCLEMENT WEATHER POLICY

**Early Release Climate/Emergencies**

2. All technicians are to presume their worksite will be open each regular workday regardless of weather conditions or public announcements made by private organizations or other government agencies. Each activity will remain open in anticipation of providing support to the affected areas of the state. Each Wing/MACOM Command will determine the minimum essential staff required to respond when called.

5. If tardiness or early release periods have not been authorized and the immediate area where a technician resides is such that travel is prohibited within that county or the installation where the technician is assigned is closed, the technician may request excused absence which will be reviewed for approval/







disapproval at this headquarters by MNHF. The request must be forwarded through command channels and contain at a minimum the following information:

a. Technician's name/work site location

b. Title/grade of position

c. Scheduled hours of work/shift

d. Home of record (including county and zip code)

e. Primary/alternate routes from home of record to work site

f. Name/phone number of immediate supervisor

g. Statement of circumstances

## BACKGROUND

Stewart Air National Guard Base is located in Newburgh, New York, which is within Orange County, New York. One of the units of the New York Air National Guard domiciled at the base is the 105th Airlift Wing. The employees involved as Grievants in this matter are assigned to the 105th Airlift Wing.

The basis of this grievance is the Agency's denial of the Grievants' requests for excused absence for March 14, 2017, due to winter snowstorm Stella, which were submitted pursuant to Article 15, Section 5.

## DISCUSSION

The parties entered into the following stipulations at the outset of the hearing:

1. This grievance involves 14 dual status technicians. They are civilian employees.

2. On March 14, 2017, winter snowstorm Stella hit the area.

3. An Orange County Executive Order was issued on March 13, 2017, which included a non-essential vehicle ban effective March 14, 2017, from 5:00 am through 11:00 pm.

4. The Grievants did not report to work on March 14, 2017.

5. All employees involved in this grievance had scheduled hours on March 14, 2017, that fell within the hours of the travel ban.

6. Under Article 15, Section 5, the employees are permitted to request an excused absence for that day.

7. The Grievants were not notified, and no announcement was made that they were essential or non-essential employees related to the date in question.

8. The term "excused absence" is effectively the same as the term "administrative leave" and those terms have been used interchangeably throughout the grievance.

The parties presented their respective positions with regard to Sections 2 and 5 of Article 15. There was extensive discussion with regard to the first sentence in Section 2. The sentence reads as follows: "All technicians are to presume their worksite will be open each regular workday regardless of weather conditions or public announcements made by private organizations or other government agencies." The Agency strongly asserts that this sentence clearly establishes the obligation of the technicians to report to work as scheduled on March 14, 2017, and that this serves as the overarching policy above other factors contained in the Article. However, the dispute is not whether the technicians believed, rightly or wrongly, that the worksite was open or closed. The Union did not dispute that the Grievants should have known, or presumed, in accordance with Section 2, that the worksite was open. There was no assertion that the Grievants did not report to work because they presumed the worksite was closed. This sentence refers to the worksite being open "regardless of weather conditions or public announcements



made by private organizations or other government agencies." It does not refer to the technicians reporting to work "regardless of weather conditions or public announcements made by private organizations or other government agencies." While, as a general rule, the technicians are to report to work as scheduled every workday, as that is their job, it is the travel prohibition that threw a wrench into the otherwise simple requirement that the technicians report to work, as would apply on any other regular day of work. Although the travel ban was related to "weather conditions," and contained in an executive order, issued as a "public announcement" by a "government" entity, this is not what Section 2 addresses. This situation triggered Section 5, and Section 2 cannot be read or applied as if Section 5 does not exist.

Section 5 specifically addresses <u>two</u> situations in which a technician may request excused absence if tardiness or early release period have not been authorized: "the immediate area where a technician resides is such that travel is prohibited within that county <u>or</u> the installation where the technician is assigned is closed." [*Emphasis added*] Since under the latter situation the installation is closed, the former situation, involving a travel ban would only need to be considered if the installation is open. A travel ban would be irrelevant if the installation is closed. Therefore, it is clear, that, while Section 2 sets the basic presumption that the worksite will be "open each regular workday regardless of weather conditions…," Section 5 creates the possibility that the worksite can be open and, at the same time, there can be a prohibition on travel affecting the technician's ability to report to work. The Agency's position that there is a presumption that the worksite is open and that is the end of the inquiry, disregards Section 5 and is rejected.

The parties are not in agreement as to the meaning of the last sentence of Section 2. The Union argues that the Agency is obligated to call employees during a major weather event to notify them if they are essential or not. Therefore, the Union asserts that "when called" means that when employees are called, to be told if they are essential, the "Command will determine the minimum essential staff required to respond." The Agency maintains that the sentence refers to the determination that must be made by "Each Wing/MACOM Command" of the "minimum essential staff required to respond when called." "When called" means when the National Guard is called upon to serve by "providing support to the affected areas of the state," as described in the second sentence of Section 2. It does not make sense that the determination would be made "when [each employee is] called." In the context of the Section as a whole, and in a manner which would give meaning to the language of the provision, the Agency's application of the last sentence is accepted and the Union's argument is rejected.

In its post-hearing brief, the Agency emphasizes its position that, "A determination by the Agency of which Union member is and is not 'essential' incident to inclement weather does not confer upon those deemed 'non-essential' a right to be granted unexcused [*sic*] leave just as it does not for those deemed 'essential.' " At first impression, the Agency is correct. That determination alone, labeling employees as essential or non-essential does not dictate their entitlement to excused absence. There are other factors contributing to whether employees are entitled to excused absence. A ban on non-essential vehicular traffic is one of those factors. In the absence of an "essential" designation, meaning an employee has not been officially informed of such designation, the employee is not exempted from the travel ban. The Agency refers to "A





determination by the Agency of which Union member is and is not 'essential' incident to inclement weather," as if, in fact, one had been made. However, there is no evidence to support a finding that such a determination was ever made and communicated to employees. The Agency, in what seems to contradict its position that a determination of "essential" versus "non-essential" does not impact entitlement to excused absence, states that, "The Agency is under no obligation to announce which Union members are "essential" and "non-essential" and to approve the requests for non-chargeable leave of those determined as "non-essential." On the one hand, the Agency has "no obligation" to announce the designation and, on the other hand, it has no obligation to approve requests for excused absence "of those determined as 'non-essential.'" The record reflects that the Agency did not distinguish between essential and non-essential and, therefore, its position on whether there was an obligation based on that distinction would be irrelevant. Regardless of whether the Agency's statements are irreconcilable, the finding germane to this case is that there is no support for the position that the employees would have believed on March 14, 2017, that they were anything other than "non-essential." The Agency entered into a stipulation that, "[T]he Grievants were not notified, and no announcement was made that they were essential or non-essential employees related to the date in question."

Klaus Jonietz, II, the ACT President of Chapter 51, explained during his testimony, that, on March 13, 2017, the day before the storm, the supervisor, Master Sergeant Harris, who is a member of the Wing's leadership, "warned us of the oncoming weather" and told us "we could take leave then or the following day." Based on the weather conditions on the morning of March 14, 2017, Mr. Jonietz called his

supervisor to report that he would not be reporting to work. He initially requested annual leave. Later that day, he learned that Orange County was in a state of emergency and that there was a travel ban, so he would not have been able to get to the base. The following day, the President at the time informed the technicians that they might be covered under administrative leave. Mr. Jonietz testified that he had relied upon his supervisor, who had told him prior to the storm that he was not needed. The supervisor told him that he could take leave on March 14, 2017. At the time, Mr. Jonietz understood that to mean that annual leave would be approved for that day. A supervisor's advance authorization of leave, due to an impending storm on a particular day, can be fairly construed to indicate to an employee that they are not considered "essential" for purposes of reporting to work that day. Notably, Mr. Jonietz's testimony stood unrebutted.

Lieutenant Colonel Michelle M. Buonome, Deputy HRO, testified that the requests were received by her office and reviewed. It was determined that the position of the Wing Commander, with regard to the requests, was needed. Her office requested that the Wing Commander, Colonel Wagner, provide input into the decision. However, such input was not received. The first response by the Agency to the excused absence requests was by email from Lt. Col. Buonome, dated April 11, 2017. In the email, she wrote, in part, that, "The excused absence requests were reviewed and are being returned without action. Per TPR 630 15-3, severe weather does not necessitate administrative closing. Employees may use any form of appropriate leave when they are prevented from arriving on time, need to leave early to avoid hazardous conditions, or could not return home if they report to work."



The Union responded to Lt. Col. Buonome's email in a memorandum, dated May 2, 2017, which served as a "verbal grievance." The Union stated, in part, that Lt. Col. Buonome's email did not reference that Article 15, Section 5, had been reviewed for applicability prior to her decision. The Union expressed its position that the documentation submitted must be considered in light of that provision.

Lt. Col. Buonome testified that her office had reviewed the documentation and forwarded it to The Adjutant General to make the decision whether to approve or disapprove the request. She stated that no one in HR made a decision to deny the requests, although her office makes a recommendation and will "provide input." She explained that once The Adjutant General makes the decision, her office notifies the employees in writing.

By memorandum to the Union, dated May 11, 2018, Lt. Col. Buonome stated, in part, that, "After careful consideration and review by TAG it was determined that all requests submitted for leave restoration are denied." She stated that the denial is based upon Article 15, Section 2, of the CBA, and cited the language that technicians are to "presume their worksite will be open." The memorandum does not refer to Section 5 of Article 15. Lt. Col. Buonome signed the memorandum "FOR THE ADJUTANT GENERAL."

By memorandum to Lt. Col. Buonome, dated June 12, 2018, the Union presented its grievance to Step 4 of the grievance procedure and asserted that, while her memorandum based the denial solely on Section 2 of Article 15, it is Section 5 of Article 15 that is applicable in this matter. Lt. Col. Buonome testified that when the Step 4

grievance was received by her office, it was forwarded to The Adjutant General for an appeal.

By memorandum dated June 27, 2018, Colonel Howard N. Wagner informed the Union that he had forwarded the requests for excused absence to The Adjutant General. He stated, in part, that he "did not recommend approval." He cited Section 2 of Article 15, as did Lt. Col. Buonome. In addition, Col. Wagner noted the Union's position that the technicians' position descriptions indicated that they are "non-essential," and that only "essential" personnel were allowed on the roads per the County Executive's order. He stated, in part: "[H]owever, the designation within a Position Description as to 'essential' or 'nonessential' is for the purposes of a sequestration event or a government shutdown. This designation does not apply to local government proclamations concerning road closures. The governor views all of us as 'essential' when it comes to domestic response." It is important to note that this statement does not challenge, and seems to acknowledge, the Union's claim that the position description designation is, in fact, "non-essential." Reference to this designation was contained in several of the Grievants' excused absence requests, which stated, in part, "In technician status I am considered non-essential personnel." Rather, Col. Wagner sought to qualify the designation of "non-essential" by breaking down the designation into circumstances to which it applies and those to which it does not apply. Specifically, he stated that it does not apply to road closures. There has been no evidence submitted to substantiate the claim that a "non-essential" designation on a position description is anything other than what it appears to be, and that it is, instead, only applicable to some circumstances and not to others, as carved out by Col. Wagner. In addition, the statement that "[T]he







governor views all of us as 'essential'…," would render Section 5 meaningless as it pertains to a technician prohibited from travel. The parties chose to address the situation in which there is a travel ban due to inclement weather. If technicians were considered "essential when it comes to domestic response," including during inclement weather, a travel ban would never be relevant to a technician and there would be no need to address it in Section 5.

By letter dated July 19, 2018, The Adjutant General, Major General Anthony P. German, issued his determination finding "the evidence compelling and the denial of the excused absence requests by MNHF supportable." This is somewhat unusual since the MNHF memorandum, dated May 11, 2018, indicated that the decision was made by TAG, and the TAG letter states that MNHF reviewed the requests and, "[A]fter due deliberation, MNHF denied the requests…" It appears that both MNHF and TAG are crediting each other with the decision-making in this case.

Major General German included the language of Section 15 in his letter. He wrote, in part, that, "The New York National Guard is considered a first responder in emergency situations such as inclement weather and provides essential services." He explained that, "Technicians are afforded a liberal leave policy with supervisor approval for those that do not wish to travel in inclement weather. Approval is only provided when the agency is able to fulfill the mission without their presence. As a federal employee of the New York National Guard the expectation is that all employees will report for duty. All employees will presume their work site will be open each regular workday and during inclement weather." There are two notable concerns with this response. The Grievants were afforded the "liberal leave policy" and were approved for chargeable leave. Major

General German was clear that, "Approval is only provided when the agency is able to fulfill the mission without their presence." This seems to contradict some of the other explanations for the denial of the excused absence requests, which based the denial on the Grievants being "essential" employees. Major General German seems to say that the liberal leave policy is offered and approved when the employee is "non-essential." However, if his position was that the Grievants were non-essential, then they were prohibited from traveling to work on March 14, 2017. As a result, under Section 5, they would be eligible to request excused absence and the claim that they are essential and not subject to the travel ban could not be made based on Major General German's assessment that the Agency was "able to fulfill the mission without their presence." The other concern with the letter is that Major General German does not address the circumstances of a travel ban, although it is part of the provision he cites and was a key component of the Grievants' requests. The letter again begs the question of under what circumstances would the Agency ever apply Section 5.

Another argument asserted by the Agency, and reiterated in its post-hearing brief, is that, "The text of the relevant CBA and statute use the operative term 'may' in relating the obligation of the Agency to provide non-chargeable leave." USC Title 5, Section 6329c, Weather and Safety Leave, states, in part, that, "An Agency may approve the provision of leave under this Section…" [*Emphasis added*] However, the parties CBA, which specifically governs the employment of the Grievants, does not contain the same language. The parties did not use the word "may' in describing the "obligation of the Agency." While the provision includes the word "may," it was not placed by the parties where the Agency represents. The language of Section 5, states, in part, that "the technician may request excused absence which will be reviewed for approval/disapproval at this headquarters by MNHF." [*Emphasis added*] The parties used the permissive term "may" in referring to the technician's option to request excused absence. By stating that the request will be reviewed for approval/disapproval, the parties clearly contemplated that a request will either be approved or disapproved, and is not automatic, and that it is an Agency decision. However, the parties did not include any specific basis on which a request would be approved or disapproved. The conclusion that can be drawn from the manner in which the parties wrote this provision is that the approval or disapproval would be based upon the requirements contained in the provision. It is not entirely discretionary and would be subject to the arbitrary and capricious standard. If the requirements in the provision are met, there is no other basis, contained in the provision, for disapproval. The specific requirements of Section 5 must be evaluated to determine if they have been met.

There are several components to Section 5's applicability. The circumstances under which the provision operates must be met and the components of the request are defined. It is helpful to break down the provision:

> If tardiness or early release periods have not been authorized and the immediate area where a technician resides is such that travel is prohibited within that county or the installation where the technician is assigned is closed, the technician may request excused absence which will be reviewed for approval/disapproval at this headquarters by MNHF.
>
> The request must be forwarded through command channels and contain at a minimum the following information:
>
> a. Technician's name/work site location
> b. Title/grade of position
> c. Scheduled hours of work/shift
> d. Home of record (including county and zip code)

e. Primary/alternate routes from home of record to work site
f. Name/phone number of immediate supervisor
g. Statement of circumstances

[*Emphasis added*]

There is no dispute that tardiness or early release periods had not been authorized. The parties agreed that although Section 5 refers to "the immediate area where a technician resides is such that travel is prohibited within that county" has been deemed by the parties to include the county where the technician is assigned. Since the installation is located within Orange County and the technicians are assigned there, the parties agreed that a travel prohibition in Orange County would have the same effect under Section 5, even if a technician lives in another county, since, clearly, he would have to travel into Orange County to report to work. The parties agreed that, whether a technician is prohibited from leaving the county in which he resides, or is prohibited from entering the county in which he works, the applicability of Section 5 is the same. Therefore, those first two conditions of Section 5 were met in this case. The Grievants requested excused absence. There has been no challenge raised by the Agency to the manner in which the requests were forwarded through command channels and no argument that the requests failed to contain the minimum information required.

The disapproval, or denial, of the Grievants' requests was not based on any of the criteria of Section 5 not having been met. While there were explanations for the denial offered by multiple individuals involved in this matter, none of them claimed that the circumstances of Section 5 or the required components of a request had not been satisfied.





In the Agency's post-hearing brief, it maintained the position that, with regard to what it referred to as the Union's "members unable or unwilling to arrive at their work site during snow storm 'Stella,'" it "ultimately determined the members' obligation to arrive at their worksite on this particular occasion to support potential emergency response duties outweighed the members' request for non-chargeable leave." This comparison and weighing of interests is misplaced. It disregards the County Executive's order. The Agency has not presented any evidence to demonstrate that it has the right to determine that its needs or the nature of its mission outweigh the order prohibiting travel. That is, in effect, the ultimate determination that it has made. Of course, the Agency may have believed that the technicians were understood to be essential employees and, therefore, it would rightfully expect that their obligation to report to work outweighed the travel ban, as they would be exempted from it. That could be a legitimate and potentially successful argument, under the right circumstances. Even the County Executive's order indicates an expectation that there will be "[P]ublic employees designated as essential personnel by their employers." That designation would outweigh, or supersede, the travel ban. As discussed at length throughout this decision, however, there has been no documentary evidence presented to establish that the technicians had been deemed "essential employees" at any time, or that such designation was ever communicated to them. The Agency may have had its own understanding or belief that they were essential; however, for the County Executive's order to be inapplicable to them, the Agency would have had to designate them as essential personnel at some point during their employment in order for them to travel in Orange County and report to work on March 14, 2017.

Master Sergeant Renae M. Turner, currently a budget analyst for the Maintenance Squadron, testified for the Agency. At the time of the snowstorm and the technicians' requests, she was the HRO Remote at the 105th Airlift Wing. She described her limited role in the processing of the excused absence requests which was solely to receive them, along with any other documentation, from the Union and submit them to headquarters. However, she also testified with regard to designating employees as essential personnel. She stated that, "To my knowledge, there is no list on the technician side that says you are deemed essential personnel." When asked if there is anything the Wing must do with respect to essential and non-essential technicians, MSgt. Turner responded that, "they need to establish who is and who is not essential personnel as far as technicians." When asked, "When do they have to do that?," she stated, "I think it should be initially, it should be stated in their position description. In my opinion, it should be listed in their position description as to whether or not they are essential personnel, or the Wing Commander if it's not in the PD, position description, then the Wing Commander needs to list it out." She said that, "Since the Commander did not say that at the time, as a technician, I presume that I'm expected to be here. If there is nothing ever conversed essential/non-essential, then it wasn't part of the conversation." As previously discussed, the designation was indicated in the position description, as MSgt. Turner believed it should be. While Col. Wagner, in his memorandum dated June 27, 2018, attempted to diminish and parse the Grievants' designation as non-essential in their position descriptions, that was the only designation formally communicated to them.





The prohibition against traveling in Orange County was beyond the control of the technicians. James A. Davison, New York State ACT Treasurer, testified that he was present at the bargaining table and involved in the negotiations regarding Article 15. He explained that the intent of Section 5 was to have a process in place so that employees would not have to use their personal leave during inclement weather events when they were prevented from reporting to work for "anything outside of their control." He gave the example of when "local/county officials or any kind of officials were ordering road closures." He stated that the purpose of the provision was to protect the technicians from being penalized and using chargeable leave for circumstances out of their control. Mr. Davison also explained that if there is a bad storm in the forecast, supervision would inform the employees that, if they are unable to make it in, there will be a "liberal leave policy," meaning that they can use their leave for the day. This testimony corroborated Mr. Jonietz's testimony that the supervisor had discussed using leave for March 14, 2017, on the prior day. There was no evidence offered to rebut Mr. Davison's testimony with regard to the intent of the Section 5, or otherwise.

The Agency did not establish that the technicians had been designated as essential personnel or that, even if management believed they were essential, that such designation had been communicated to them. The only designation of record was "non-essential," on their position description, which Col. Wagner was unsuccessful in discounting. It was undisputed that technicians were informed in advance by their supervisor that a liberal leave policy would be in effect on the date in question. This further served to reinforce to the technicians that they were not considered essential personnel for purposes of the impending storm, or otherwise. Therefore, all indicators,

including the position description, the application of the liberal leave policy, and the Inclement Weather Policy of Article 15 describing the parties' expectation that a travel prohibition could affect a technician's ability to report to work, support the Union's position that the technicians were not "designated as essential personnel" by the Agency and, therefore, were prohibited from travel to their worksite on March 14, 2017. The Union presented sufficient evidence to support its grievance and the unquestionable applicability of Article 15, Section 5, in this case. The Agency failed to demonstrate any basis under Article 15, Section 5, for the denial of the excused absence requests.

**AWARD**

The Agency's denial of the Grievants' requests for excused absence for March 14, 2017, was without merit and was not in accordance with the provisions of Article 15 of the CBA. The Agency shall credit the chargeable leave used by the Grievants on March 14, 2017, and their absences on that date shall be deemed excused absence/ administrative leave.

Dated: May 13, 2019

Amy Lynne Itzla, Esq.
Arbitrator

State of New York ) ss:
County of Westchester )

I, Amy Lynne Itzla, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Dated: May 13, 2019

Amy Lynne Itzla, Esq.
Arbitrator



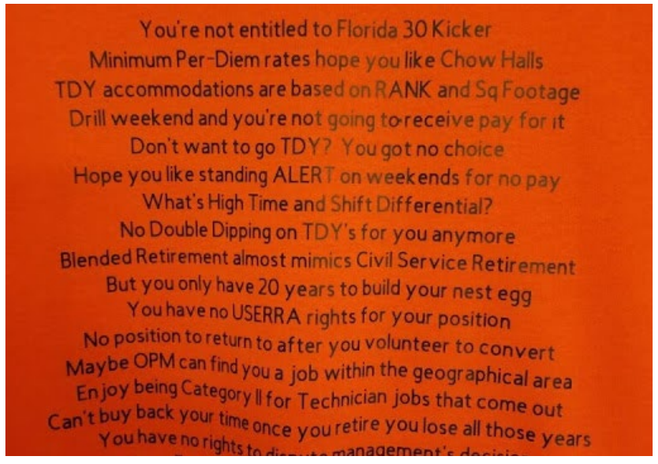




# TO CONVERT OR NOT...AGR

## Chapter President Kimothy Steele

## First Coast Chapter #86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