ASSOCIATION OF CIVILIAN TECHNICIANS act

THE TECHNICIAN

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Issue #1 , Vol. 78

ACT CARES / EMPLOYEE'S KNOW / ACT GROWS

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ELECTION 2020

NOMINATIONS NOTICE FOR ACT'S BOARD OF DIRECTORS

Nominations open April 1, 2020 and will close May 15, 2020

As of **April 1, 2020** The Election Committee will begin accepting Nominations for the positions of National:

President
Treasurer
Vice President NE
Vice President NW

Only written nominations will be accepted electronically. All nominations must be date stamped by the e-mail server not later than **May 15, 2020**. To be eligible for office a nominee must have been a member in good standing and on the membership rolls since July 1, 2019**.**

When submitting your nomination, include the name / home mailing address / chapter name and number / e-mail address of the nominee as well as your name / home mailing address / chapter name and number / e-mail address. This complete information is necessary in order to validate the nomination. Failure to provide this information could result in a nomination not being validated. Prior to submitting your nomination, it is advisable to confirm that the individual is willing to accept the nomination.

All nominations are to be e-mailed to 2020 ACT Election Committee at the following e-mail address:
2020.ACT.ELECTION.COMMITTEE@actnat.com

Once nominations are validated, the Election Committee Chairman will contact the nominees by e-mail to obtain acceptance and biographical information which will be printed in the ACT Technician newspaper prior to the ballot being e-mailed to eligible ACT voters.

Thoughts by Les Hackett - Legislation Director

For whatever reason the current administration officials seem bent on making life miserable for federal employees who make the Government function day in and day out, all the while the political class tears itself apart. Besides being willing to furlough federal employees at will to gain political advantage this administration is also working to destroy unionism in the Federal Government. The evidence of this fact to date is compelling. They continue to hamstring the organizations that adjudicate certain employee/ union and Agency disputes. How? By failing to make timely appointments to the Merit Systems Protection Board (MSPB), which adjudicates very important matters (including long suspensions/ removals and retirement disputes) plus to date they have failed to appoint an FLRA General Counsel who must be in place for the adjudication of Unfair Labor Practices (ULPs). Then the administration, in 2018, issued four Executive Orders (EOs) which seek to gut the very foundations of how unions assist their membership. Namely: the use of official time by union officials to represent employees and also by attempting to exclude removals from the grievance procedure. Both these efforts (slow balling appointments and these EOs) have resulted in federal employees losing any avenue to receive due process in dispute with the Agency.

Now comes the Presidential memo that appears to green light the elimination of union representation in the entire Defense Dept by using the authority granted in 5 USC Sec. 7103(b). If this initiative is carried out it would mean hundreds of thousands of DoD employees would be denied the right to union representation that they have enjoyed for decades under 5 USC Chapter 71.

Once again this looks like a solution in search of a problem. What has recently changed in the DoD labor relations arena that requires such a drastic measure of totally blowing up labor relations in that Agency?? DoD has been engaged in the GWOT for almost 20 years and no such drastic measure has been considered in that time, even under the George W. Bush administration who was no friend of federal unions (remember NSPS)!!! If anything, the lack of any evidence that unionism in DoD has threatened national security or restricted DoDs "flexibility" would indicate otherwise. But once again this memo seems to be the administration inviting the use of a machete approach when a scalpel is all that is needed and we might add already available. The scalpel of which we speak is 5 USC Sec. 7112(b)(6). This statutory language already allows agencies to exclude individuals and groups of employees from union coverage if their duties include intelligence, counterintelligence, investigative, or security work which directly affects national security. DoD already uses this language to exclude thousands of employees from union bargaining units. So why not continue the scalpel not the machete??? Furthermore, FLRA guidance concerning delaying work place changes until appropriate negotiations are completed also gives DoD all the "flexibility' it needs. If the functioning of the Agency (DoD) requires the work place change to take place immediately, negotiations may be conducted after the fact and not delay the change. So the question we must ask is why? Why throw DoD into such an upheaval and create such animosity between employees and DoD when they already have the tools to exclude certain occupations from union coverage and to also make work place changes prior to completing negotiations??? Would it surprise you that partisan politics would be involved?? I didn't think so. There seems to be a belief that unions and their membership always support incumbents and candidates from a certain political party over the other. So I guess the thought process is if we can destroy the unions and individuals that support that favored party it will be crippled. Number one- I would refute the assertion that all unions and their members are monolithic and vote straight party line. And number two- I would question the wisdom of antagonizing those folks that may have voted for you by destroying their union. The most mystifying thing about this whole thing is that lacking legislation permanently excluding DoD employees from union coverage is that the next administration could do a 180 and allow all those employees back under the coverage of Chapter 71 which would take thousands and thousands of official time hours to re-establish those bargaining units and re-negotiate contracts. So let's not use a machete when we already have a perfectly good scalpel!!

United States Senate
WASHINGTON, DC 20510

February 27, 2020

President Donald Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20502

Dear Mr. President:

We write to express our concern about the January 29, 2020, Memorandum for the Secretary of Defense regarding collective bargaining that was recently promulgated.

More than 700,000 Americans work civilian jobs for the Department of Defense. They are dedicated to the Department's mission and a part of the Department's successes. This new memorandum provides the Secretary of Defense and other department officials with the blanket authority to waive the collective bargaining rights of all of these employees when, in fact, labor organizations and collective bargaining in the civil service are in the public interest.

We all agree that the Department of Defense requires flexibility to respond to the challenges that our nation faces. However, collective bargaining is not only compatible with this needed flexibility, but also is a key component in preserving flexibility by giving employees a voice in the system and providing avenues for management to receive feedback.

A fair collective bargaining process is a cornerstone of American labor law and a right afforded to employees within the federal government. Any exemptions permitted by the process are not meant to be given widely to an entire Department as a sweeping declaration, but to be carefully considered. In fact, because of existing safeguards, no president has found it necessary to issue a blanket exemption of all Department of Defense employees from collective bargaining since enactment of the Civil Service Reform Act of 1978.

Instead, previous use of this authority has been as narrowly crafted as possible. Any attempts to broadly exempt agencies or subdivisions that have been operating successfully would run contrary to the intent of the authority and successful practice. Any future exemptions of new agencies or subdivisions should be consistent with prior uses of the exemption for national security purposes.

The Department of Defense has a history of working with labor unions that represent the interests of employees. We encourage the Department to continue this cooperation and to preserve longstanding protections for federal employees. Allowing any department or subcomponent to exempt itself for poorly defined reasons runs contrary to these protections.

We urge you to reconsider this new memorandum and work to protect the collective bargaining rights of federal employees, including those at the Department of Defense.

Sincerely,

Susan M. Collins
United States Senator

Mark R. Warner
United States Senator

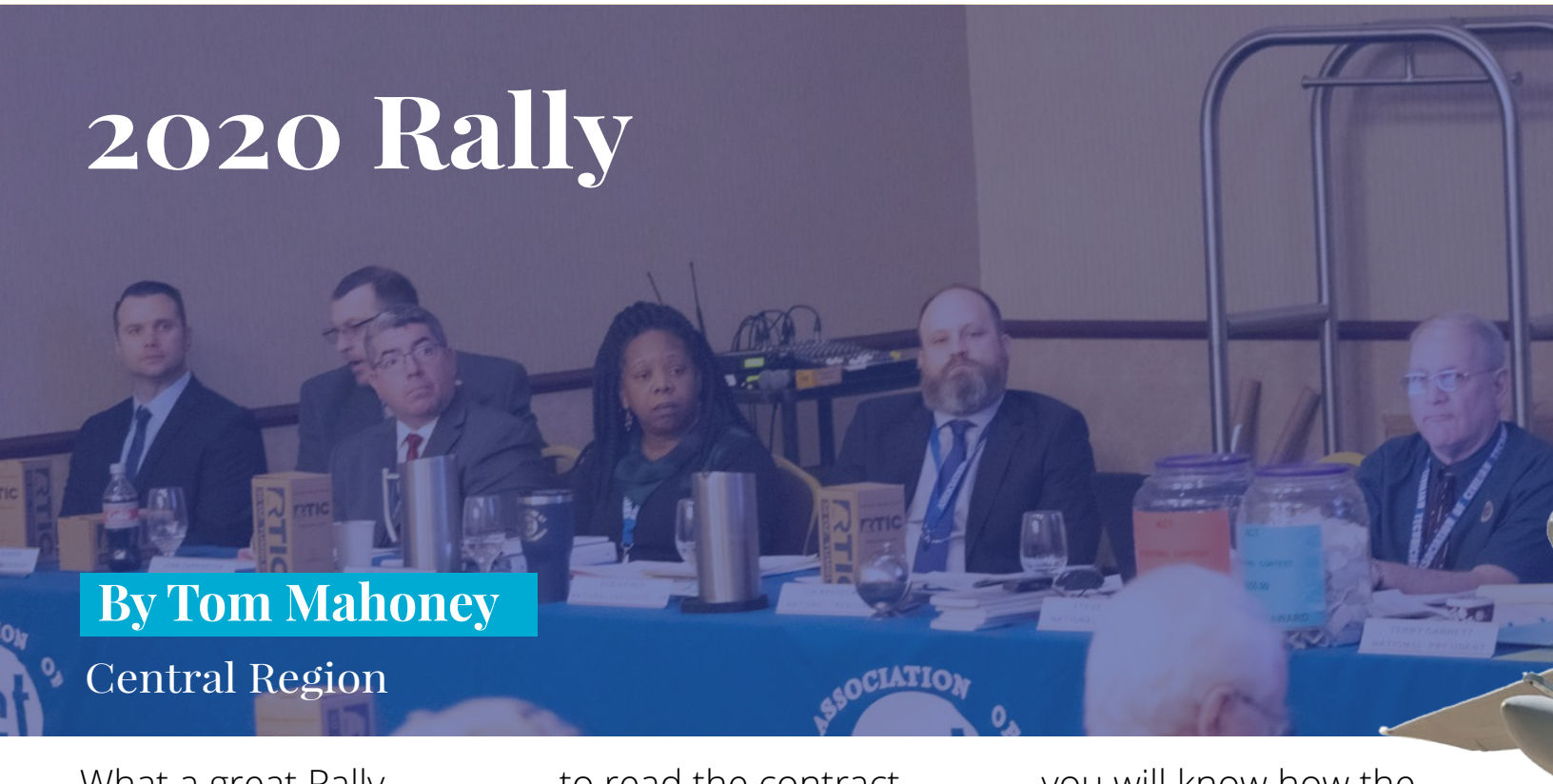
Benjamin L. Cardin
United States Senator

Chris Van Hollen
United States Senator

Tim Kaine
United States Senator

Gary C. Peters
United States Senator

2020 Rally



By Tom Mahoney

Central Region

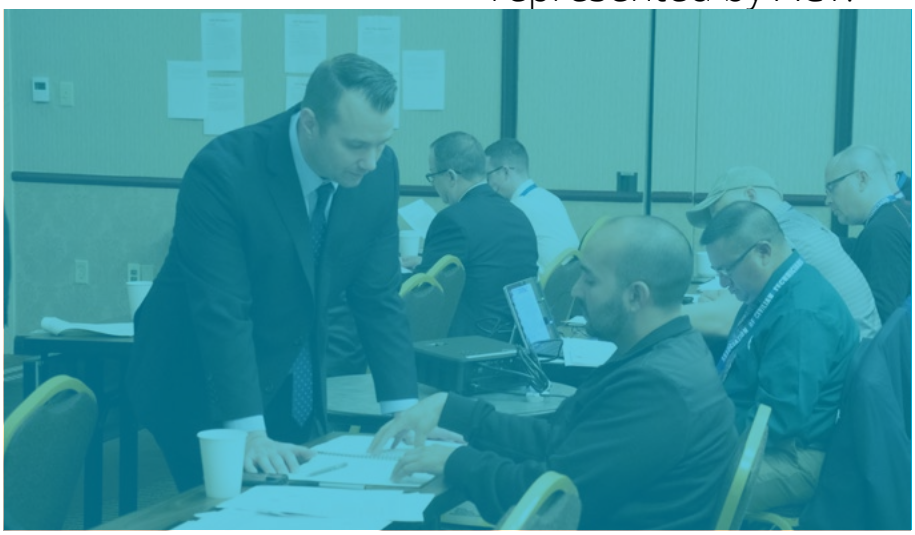
What a great Rally. The Central Region was well represented on the Hill and at the business meeting. Thanks for all your efforts and attendance. This year's rally really tested home turf Labor and Management relationships. A few chapters had the good fortune of having their Official Time approved business as usual. Some Chapters were less fortunate and their official time was eventually approved after a short battle. The battle was getting management to read the contract and realize that the Executive Orders (EOs) were not enforceable over existing contract language. Unfortunately, in one Chapter we are moving to the last step in the grievance process. Being from Vegas I am betting arbitration will be necessary to convince management that only approving LWOP for two days spent discussing desired legislation is a clear violation of the contract. We are prepared and maybe by the next "Technician" you will know how the saga ended.

A couple chapters are still going back and forth with Defense Civilian Personnel Services (DCPAS), during their contract agency head review period. The provisions getting disapproved our those relative to Official Time and "free" use of office space and equipment. This is a time-consuming issue, but we are making progress. On the horizon is the biggest issue. When this administration does not get what it wants it

resorts to the claim, "we have to have it because it effects "National Security". The administration claims Unions create a National Security issue. One day this administration claims they want to hear from the rank and file of those involved in National Security the next day the administration wants to eliminate their voice. I shared a letter,

with many local union officials, which I sent to the two Senators representing my State. It only takes a minute to cut and copy your representatives name into the letter, print, sign, and mail. If your chapter did not forward this letter to you please request it from them. This is the time to flood our congress with letters on this subject. If you do not have time to send a letter be sure and take time to vote in 2020. Your vote is the best way to stop the wrecking ball aimed at our union workforce.

On a brighter note we are seeing new members joining ACT some our new employees and some are seasoned who have witnessed the value of supporting ACT. I compare ACT to a volunteer fire department. My support helps put out fires in the work place and gives me peace of mind ACT will respond to my fire if needed. Keep up the recruiting there is no time like the present for another voice. Additionally, ACT may be experiencing growth in the way of employees at Tyndall Air Force Base, Florida. We are working with the FLRA to have those employees represented by ACT.



We should have that determination by late April or early May.

Keep up the good work and now more than ever "Keep the Faith"

2020

Rally

ACT Coat Winners

ACT Awards

ACT $100 Gift Card Winners

Mike Kelly Maine

Matthew Carpenter $1,000 Recruiter Contest Winner

2020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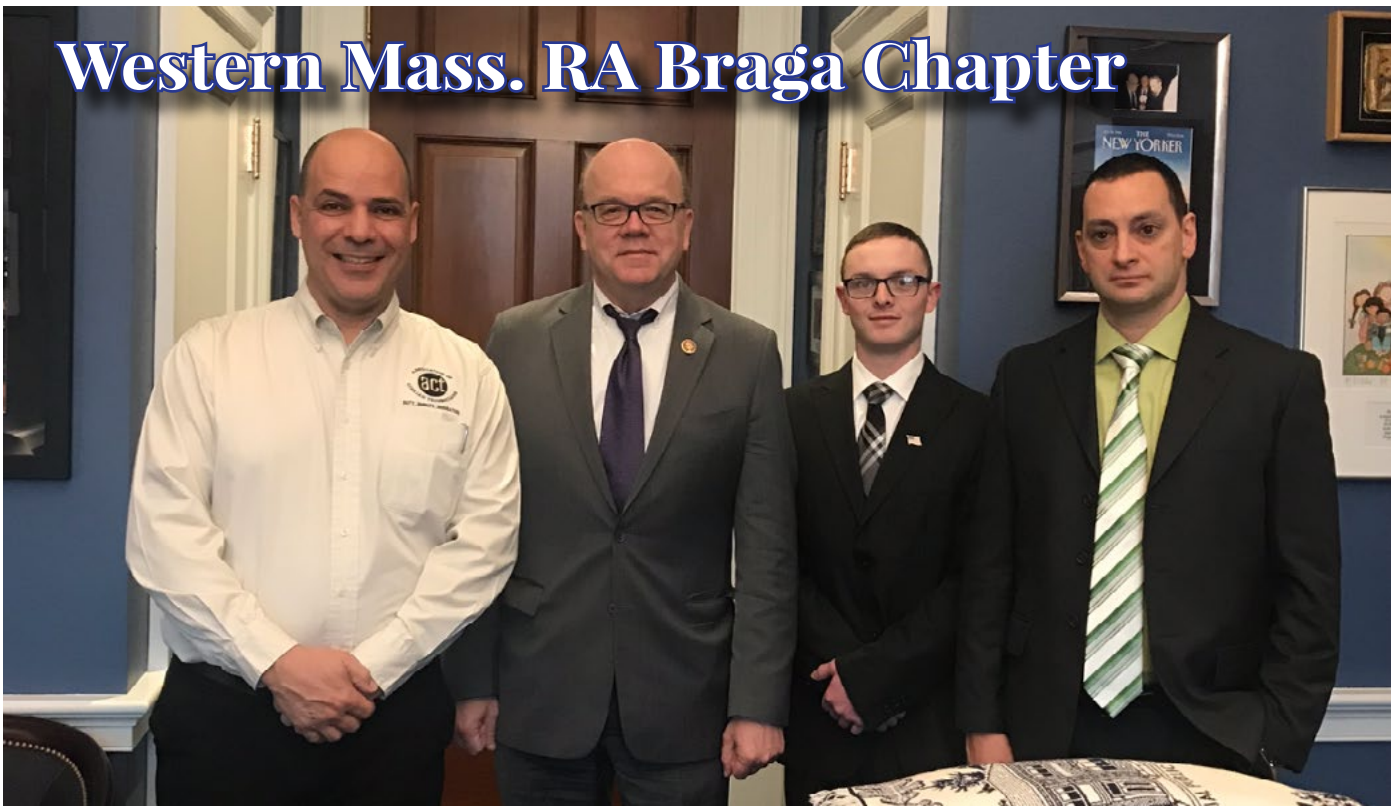

Western Massachusetts RA Braga Chapter meet with Congressman Jim McGovern. Left to Right: Joe Tereso, Congressman McGovern, Mike Allen, Keith Pigeon.

Current members Elmer Scott, Kent Rohrer, Secretary Troy Johanson, Retired Joe Kraft, VP John Burkhart, Current Chessa Baumgardner, Scott Gainsforth, Retired Jeff Wright, Ed Dosch, Current President Andrew Stroklund, Retired Mike Seibel, Dale Kraft, Current Treasurer Dave Reed, Jon Hunt.

ACT Central Region Attends Rally 2020

New Board Members

Far right National Secretary Steve Fisher swears in NEW Board Members. John Sappington, Felicia Neale, Rick Wrenn.

JOHN THOMAS HUNTER
July 5, 1933 - January 20, 2020

ACT National President
1984 - 2000

John Thomas Hunter, son of Daniel and Genevieve Hunter, passed away peacefully at home on January 20, 2020, at approximately 2:20 PM, at his home in Lake Ridge, Virginia at the age of 86. John was the beloved husband of Patricia Mary Hunter who preceded him in death in March of 2015. He was the wonderful father of four sons, as well as a delightful grandfather to twelve grandchildren and nine great grandchildren. In addition to wife, Patricia, John was preceded in death by his parents, brother Daniel, and one grandson. John is survived by sons Thomas (wife Patti) of Charleston, SC, John (wife Janet) of Dallas, TX, Daniel (wife Beth) of Bay Shore, NY, and Kevin of Syracuse, NY. John's grandchildren are Erin Loso, Kaelah Hunter, Christopher Hunter, Adria Hunter, Ashley Outlaw, Alyssa LaTouche, Katie Homestead, Carolyn Hunter, Ryan Hunter, Sean Hunter (deceased), Lauren Hunter, and Elizabeth Hunter.
John was an active aircraft mechanic for the Air National Guard for more than 25 years and served as president of the Association of Civilian Technicians (ACT) union from 1984 to 2000. His contagious laugh, effervescent sense of humor, and friendliness to every person he met made him a popular personality and everyone's best friend. He was a strong father and a stellar example of manhood and character to his sons. John was a devoted member of St. Elizabeth Ann Seton parish and is loved by many friends and extended family members.

The family will receive friends at the Mountcastle Turch Funeral Home, 4142 Dale Boulevard, Dale City, VA 22193 on Friday, January 24th from 2 to 4 PM and 7 to 9 PM. A Mass of Christian Burial will be on Saturday, January 25th at 2:30 PM at St. Elizabeth Ann Seton Catholic Church, 12805 Valleywood Dr., Lake Ridge, VA 22192.

Memorials preferred to St. Jude Children's Research Hospital.

GERALD PATRICK LLOYD

APRIL 12, 1968 – JANUARY 28, 2020

Gerald Patrick Lloyd, 51, passed away January 28, 2020 in Jacksonville, Florida. Senior Master Sergeant Gerald Lloyd served honorably in the Florida Air National Guard for 32 years as an Armament System Specialist. Known as "Bull" to his colleagues and peers, Gerald enlisted in the Florida Air National Guard on May 28, 1987 and spent over three decades working on two different fighter jet platforms including the F-16 and F-15. He deployed to multiple locations across the world including Saudi Arabia, Netherlands, Bulgaria, Romania and most recently United Arab Emirates. Gerald earned an Associate Degree in Aircraft Armament Systems Technology from the Community College of the Air Force in 2018. Gerald received multiple citations and decorations including the Air Force Commendation Medals, the Air Force Achievement medal, The Florida Commendation Medal and the Florida Service Medal.

Gerald was a graduate of Stanton College Preparatory School, Jacksonville's first magnet school. He was a devout Christian, a devoted husband, loving father, brother and friend. Known as "Brother G" at Paxon Revival Center Church, Gerald served with wife Sissy as children's pastors for 23 years and ministered to young couples for the past two years. He enjoyed boating and fishing and spending time with family and friends. He loved serving his country and traveling the world through his work with the Florida Air National Guard. Gerald was an incredible light on this earth, always willing to help others and always willing to share a smile, a joke and even a song or two.

Gerald is survived by his loving wife of 22 years, Doris "Sissy" Robinson Lloyd; a son, Patrick Lloyd; daughters Heather Lloyd, Danielle Chavez and Jessica Chavez; four grandchildren, Anthony, Adam, Mikayla and Isaac; sisters Rhonda Lawrence (Sam) and Alice Loper; brothers Alvin Moore (Stephanie) and David Moore (Beth); three nieces, five nephews and many other relatives and friends. Gerald was preceded in death by his parents, Wonnie Lewis Lloyd and Aileen Knight Lloyd; brother Fred Lloyd and sister Sarah Lloyd Lewis.

Visitation will be held Friday, January 31, 2020, at Paxon Revival Center Church, 5461 Commonwealth Ave., from 6:00 p.m. until 8:00 p.m. The funeral service for Mr. Lloyd will be Saturday, February 1, 2020, at 1 PM, at Paxon Revival Center Church, with Pastor Steve Dobbs officiating. Interment will be held Monday, February 3, 2020 at 10:00 a.m. at Jacksonville National Cemetery, 4083 Lannie Road.

Funeral arrangements entrusted to Hardage-Giddens Riverside Funeral Home & Riverside Memorial Park, 7242 Normandy Blvd., 904-781-9262. Friends may visit hgriversidefuneralhome.com.

~ "It's just a flesh wound" ~

BOARD / FIELD REP'S / LAWYER MEETING AT 2020 RALLY

ASSOCIATION OF CIVILIAN TECHNICIANS

Terry W. Garnett
National President

Association of Civilian Technicians, Inc.

Proposed Amendment of 10 U.S.C. § 10216(g)

to

Prevent Loss of Technician Civilian Employment Due Solely to Loss of Military Membership Without Fault

2 December 2019

Problem

Under current law dual status technicians—most of whom are 32 U.S.C. § 709 National Guard technicians employed to maintain military equipment and perform other military support functions—automatically lose their civilian employment if for any reason they are separated from the military. Military retention boards customarily separate technicians from the military in mid-career, when they are in their late forties or early fifties, with no statement of reasons, and typically just to create openings on the military roster for younger Guard members—to have a "young, vibrant" military force, despite the consequent reduction in experience, efficiency, and readiness.

This destructive practice—which treats maintenance personnel as if they were infantry—is contrary to the intent of Congress in enacting the 1968 Technicians Act. The legislative history of the Act—Senate Report 1446, page 12—expressly states that Guard technicians who properly do their jobs should be employed until they reach age 60, normal retirement age.

In the 5 years prior to April 2016 over 7500 dual status technicians lost their technician employment after losing Guard or Reserve membership. Only about 15% qualified for immediate unreduced civil service retirement. Thus, about 85%, most of them veterans of overseas deployments, received modest severance payments but no immediate retirement benefits. They were thrust into the unenviable position of being in their mid-40s to mid-50s with a family to support, no job, no affordable health insurance, and a dismal career outlook.

A right to reach normal retirement—absent misconduct justifying removal, unsatisfactory job performance, or medical disability warranting disability retirement—is necessary to recruit and retain high quality technician personnel. Vulnerability to arbitrary separation at age 46 or 52 impedes recruitment of the best and brightest. With respect to those who accept technician employment initially, it creates a strong incentive

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for the best, at age 38 or 42, to take their taxpayer-paid training elsewhere, to careers where they have ample assurance of reaching normal retirement age.

Proposed Solution

Dual status technicians who are separated from the military, other than for unacceptable job performance or misconduct of a kind that also warrants removal from civilian employment, should not be separated involuntarily from their civilian positions until they reach entitlement to an unreduced retirement annuity—unless they are separated for unacceptable performance, misconduct, or failure to meet physical fitness or height weight standards, or disability entitling them to civilian employment disability retirement.[1]

Enhancement of Military Readiness

The proposed solution would enhance, not reduce, military readiness.

The original concept of dual status employment is that, with some exceptions, technicians should hold identical civilian and military positions so that when the entire unit is activated to full-time overseas military service the unit's capabilities are unchanged. This concept has continued validity today, but with a significant modification. The era of whole unit deployments—as in World War II—is over. Entire state Army or Air National Guards no longer deploy overseas en masse. No stateside bases are completely vacated by military personnel—with only civilian office workers remaining, and runways and villages of empty buildings left to the tumbleweeds. Equipment maintenance units overseas often are staffed by Guard members from several different states. The standardized training they receive enables them to work together as efficiently as they did with their colleagues at their respective home bases.

Since Guard or Reserve units normally deploy on a rotational basis, units activated for overseas military deployments typically do not take all personnel and unit equipment with them. Depending on the type of unit, deployed personnel normally use and maintain equipment that is already at the deployment site. Some equipment always remains at the home base for training non-deployed unit personnel or in case another

[1] Technicians militarily separated for medical disabilities that do not qualify them for normal civilian disability retirement under 5 U.S.C. § 8337(a) or § 8451 should have the option of continuing their employment or electing the special disability retirement to which technicians are entitled when medically separated from the military. *See* 5 U.S.C. §§ 8337(h) and 8456. The option to elect either continued employment or special technician retirement is available at this time only to Wounded Warrior technicians whose disabilities are combat related. The option should be available to all technicians irrespective of the cause of their military medical disqualification. To date, very few, if any, Wounded Warriors have elected the option of continuing their federal employment—likely because special technician disability retirement plus private sector employment is more remunerative. Nonetheless, the option of continued federal employment should be offered to those who might prefer it, despite the financial sacrifice.

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federal mission or State emergency develops. Non-deployed personnel must be trained and stay-behind equipment must be maintained.

Consequently, there always is a continuing need at the home base for employees who perform the same jobs as those who have been activated for overseas military duty. Having available for home base work experienced former dual status technicians who have lost military membership without fault would ensure that this work is in capable hands and also make these experienced employees available to train younger technicians and Traditional Guard members.

Additional benefit and flexibility would be afforded by the fact that, although these non-military members could not be compelled by law to perform overseas duty, they could be assigned to work overseas as civilians, if management so desired, and most of them likely would accept the assignments rather than resign from their employment.

By transforming technician employment back to career employment, as Congress originally intended, ability to recruit and retain the highest quality personnel would be enhanced and greater numbers of more experienced personnel would be available for home base employment, while an ample number of military members—and experienced, willing civilian employees, should management choose them—would be available for overseas deployments.

The attached amendment would require the Secretary of Defense to convert dual status technicians who are separated from the Guard—involuntarily and not for unacceptable performance, misconduct, or failure to meet physical fitness or height weight standards, —to Title 5 National Guard employees until they are eligible for early FERS retirement under 5 U.S.C. § 8414(c). The technicians would be required to apply for conversion and would be disqualified if disability prevented them from performing the duties required for the position. Like all federal employees, they would continue to be subject to removal for unacceptable performance or misconduct.

This amendment would be a win-win for employees and the National Guard. The Guard technician program again would provide career employment—an expectation that, normally, employment will continue at least until eligibility for early retirement benefits is attained. The Guard would enjoy a cadre of experienced employees and, when they reach early retirement age, be able to convert their positions back to dual status.

We ask your support for this amendment.

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ASSOCIATION OF CIVILIAN TECHNICIANS

Terry W. Garnett
National President

Bill Language for New 10 U.S.C. § 10216(g)

SEC. _____. RETENTION OF MILITARY TECHNICIANS WHO LOSE DUAL STATUS.

Section 10216 of title 10, United States Code, is amended by striking subsection (g) and inserting—

"(g) Retention of Military Technicians Who Lose Dual Status.—(1) Notwithstanding subsection (d) of this section or subsections (a) (3) and (b) of section 10218 of this title, if a military technician (dual status) loses such dual status as the result of involuntary separation from the Selected Reserve, except for misconduct, unsatisfactory performance or failure to meet physical fitness or height weight standards, the Secretary shall convert that person's position in accordance with section 2102(a) of title 5 to a position under section 3101 or section 5342(a)(2) of that title, as the case may be, and retain the person as a non-dual status employee so long as—

(A) the person requests retention;

(B) the disability does not prevent the person from performing the duties of the position; and

(C) the person, while a non-dual status employee, is not disqualified from performing the non-dual status functions or position because of performance, medical, or other reasons.

(2) For purposes of section 8414(c) of title 5, the service of a person so retained is service as a military reserve technician and as a military technician and the person shall be removed not later than 30 days after becoming eligible for an unreduced annuity under that section."

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Current 10 U.S.C. § 10216(g)

(g) Retention of Military Technicians Who Lose Dual Status Due to Combat-Related Disability.—(1) Notwithstanding subsection (d) of this section or subsections (a) (3) and (b) of section 10218 of this title, if a military technician (dual status) loses such dual status as the result of a combat-related disability (as defined in section 1413a of this title), the person may be retained as a non-dual status technician so long as—

(A) the combat-related disability does not prevent the person from performing the non-dual status functions or position; and

(B) the person, while a non-dual status technician, is not disqualified from performing the non-dual status functions or position because of performance, medical, or other reasons.

(2) A person so retained shall be removed not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age.

(3) Persons retained under the authority of this subsection do not count against the limitations of section 10217(c) of this title.

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ASSOCIATION OF CIVILIAN TECHNICIANS

Terry W. Garnett
National President

Legislation to Increase Military Leave

5 U.S.C. §6323(a) entitles federal employees to 15 days of military leave per fiscal year, which allows them to receive both their federal civilian and military pay when absent from their federal jobs for certain categories of military service authorized under Title 32 (State Status) and Title 10 (Federal Status).

At the time Congress enacted the military leave statute Guardsman were normally required to perform 15 days of annual training (Summer Camp) and 12 Drill weekends per fiscal year. So, for the most part, the 15 days of military leave were adequate to cover an employee's absence for required military service.

Since the beginning of the Global War on Terror after 9/11, the increased operational tempo and training requirements for Guard members have dramatically increased the time they are required to be absent from work for extra military training. The traditional "drill weekend" has morphed from one weekend per month into the "Super Drill," which may start on Thursday and run through Sunday. The traditional two-week annual training in many cases has been extended to three weeks and sometimes a month. Unfortunately, Congress has not updated the military leave statute to reflect the new reality requiring increased absences from work for military service.

The requirements for increased military service, moreover, fall disproportionately on the federal employees who are employed by the National Guards of which they also are military members. Guard Commanders realize that extra days away from work for traditional Guard members, who work in the private sector, put additional stress on their relationships with their employers and may negatively affect their willingness to remain in the Guard. Although employer support for Guard service generally is quite strong, Commanders, to avoid the risk of impairing that support, avoid assigning extra duty to traditional Guard members when they instead can rely on Guard employees to perform that extra military duty.

Currently, once these employees expend their 15 days of military leave, they must either use their own personal annual leave or request leave without pay to satisfy their additional military obligations. Guard members should not have to use their personal leave or be in a non-pay status from their civilian jobs in order to support the increased demands of what traditionally was part time Guard service.

In order to remedy this situation, we are asking you to introduce or support legislation that will increase military leave authorized under 5 U.S.C. §6323(a) from the current rate of 15 days per fiscal year to 30 days per fiscal year.

Please see proposed amendments to 5 USC §6323(a)(1) below on page 2:

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(Note: Strikethroughs denote deleted language. Red font denotes new language.)

5 USC §6323: Military leave; Reserves and National Guardsmen

§6323. Military leave; Reserves and National Guardsmen

(a)(1) Subject to paragraph (2) of this subsection, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss in pay, time, or performance or efficiency rating for active duty, inactive-duty training (as defined in section 101 of title 37), funeral honors duty (as described in section 12503 of title 10 and section 115 of title 32), or engaging in field or coast defense training under sections 502–505 of title 32 as a Reserve of the armed forces or member of the National Guard. Leave under this subsection accrues for an employee or individual at the rate of ~~15~~ 30 days per fiscal year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year. ~~until it totals 15 days at the beginning of a fiscal year.~~

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ASSOCIATION OF CIVILIAN TECHNICIANS

Terry W. Garnett
National President

End TRICARE Discrimination Against Federal Employees

Overview

Currently, under 10 U.S.C. §1076d, federal employees and retirees who are eligible for health insurance coverage under the Federal Employees Health Benefits Program (FEHBP) are ineligible for TRICARE Reserve Select (TRS). To our knowledge FEHB eligible federal employees and retirees are the only members of the Selected Reserve that are not eligible for health benefits under TRS.

Problem

Plans and benefits under the FEHBP are substantially more costly for participants when compared with TRICARE Reserve Select (TRS). The table below compares some of the costs of TRICARE Reserve Select to one of the more popular national fee for service plans under the FEHB (Blue Cross/ Blue Shield Standard).

Health Plans 2020	Premiums	Deductibles	Co-Pays	Catastrophic Caps (annual)
	Self/ Family	Self/ Family	Out Patient Surgery	Self/ Family
TRICARE Reserve Select	$42.83/ $228.27	$150.00/ $300.00	$25.00	$1000.00
FEHB Blue Cross/ Standard	$253.30/ 621.27	$350.00/ $700.00	15% of allowed fees	$10,000.00 (PPO)

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FEHB much more costly than TRICARE

As the table indicates there is a substantial cost difference between TRICARE and Blue Cross/ Blue Shield. The bottom line is that, by excluding FEHB eligible Guard and Reserve members from the option of enrolment in TRS, Congress is costing these members and their families thousands of dollars each year in extra medical costs. If the FEHB were even close to providing the same health care coverage at a similar cost as TRS, this would not be such a pressing issue. But as you can see by the table above this is not the case.

It seems particularly unfair that Guard and Reserve members who happen to qualify for the FEHBP are denied access to TRICARE Reserve Select while their counterparts working for state and local governments or the private sector are fully eligible for TRICARE benefits.

Legislative Solution

In January 2019 Mr. Kelly introduced H.R. 613 the "TRICARE Reserve Select Improvement Act." (See attached.) The language of H.R. 613 would amend 10 U.S.C. §1076d to allow members of Selected Reserve who are eligible for the FEHB program to also be eligible for TRICARE Reserve Select.

In order to remedy the current situation concerning the lack of TRICARE eligibility for federal employees we are requesting that you work with your colleagues on the HASC to add the language of H.R. 613 to the 2021 NDAA when that bill is marked up this spring.

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116th CONGRESS
1st Session

H. R. 613

To amend title 10, United States Code, to remove the prohibition on eligibility for TRICARE Reserve Select of members of the reserve components of the Armed Forces who are eligible to enroll in a health benefits plan under chapter 89 of title 5, United States Code.

IN THE HOUSE OF REPRESENTATIVES
January 16, 2019

Mr. Kelly of Mississippi (for himself, Mr. Garamendi, Mr. Gianforte, and Ms. McCollum) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to remove the prohibition on eligibility for TRICARE Reserve Select of members of the reserve components of the Armed Forces who are eligible to enroll in a health benefits plan under chapter 89 of title 5, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short title.

This Act may be cited as the "TRICARE Reserve Select Improvement Act".

SEC. 2. Modification of eligibility for TRICARE Reserve Select of certain members of the Selected Reserve.

(a) In general.—Section 1076d(a) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking "(1) Except as provided in paragraph (2), a member" and inserting "A member"; and

(2) by striking paragraph (2).

(b) Sense of Congress.—It is the sense of Congress that the costs of carrying out the amendments made by this section, if any, will be offset.

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ASSOCIATION OF CIVILIAN TECHNICIANS

Terry W. Garnett
National President

End TRICARE Discrimination Against Federal Employees

Overview

Currently, under 10 U.S.C. §1076d, federal employees and retirees who are eligible for health insurance coverage under the Federal Employees Health Benefits Program (FEHBP) are ineligible for TRICARE Reserve Select (TRS). To our knowledge FEHB eligible federal employees and retirees are the only members of the Selected Reserve that are not eligible for health benefits under TRS.

Problem

Plans and benefits under the FEHBP are substantially more costly for participants when compared with TRICARE Reserve Select (TRS). The table below compares some of the costs of TRICARE Reserve Select to one of the more popular national fee for service plans under the FEHB (Blue Cross/ Blue Shield Standard).

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FEHB much more costly than TRICARE

As the table indicates there is a substantial cost difference between TRICARE and Blue Cross/ Blue Shield. The bottom line is that, by excluding FEHB eligible Guard and Reserve members from the option of enrolment in TRS, Congress is costing these members and their families thousands of dollars each year in extra medical costs. If the FEHB were even close to providing the same health care coverage at a similar cost as TRS, this would not be such a pressing issue. But as you can see by the table above this is not the case.

It seems particularly unfair that Guard and Reserve members who happen to qualify for the FEHBP are denied access to TRICARE Reserve Select while their counterparts working for state and local governments or the private sector are fully eligible for TRICARE benefits.

Legislative Solution

In January 2019 Senator Daines introduced S. 164 the "TRICARE Reserve Improvement Act." (See attached.) The language of S. 164 would amend 10 U.S.C. §1076d to allow members of Selected Reserve who are eligible for the FEHB program to also be eligible for TRICARE Reserve Select.

In order to remedy the current situation concerning the lack of TRICARE eligibility for federal employees we are requesting that you work with your colleagues on the SASC to add the language of S. 164 to the 2021 NDAA when that bill is marked up this spring.

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116th CONGRESS
1st Session

S. 164

To amend title 10, United States Code, to remove the prohibition on eligibility for TRICARE Reserve Select of members of the reserve components of the Armed Forces who are eligible to enroll in a health benefits plan under chapter 89 of title 5, United States Code.

IN THE SENATE OF THE UNITED STATES
January 16, 2019

Mr. Daines (for himself, Mr. Manchin, Mr. Crapo, Ms. Baldwin, Mrs. Capito, Mr. Tester, Mr. Boozman, Mrs. Shaheen, Mr. Moran, Mr. Jones, Mr. Hoeven, and Ms. Rosen) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To amend title 10, United States Code, to remove the prohibition on eligibility for TRICARE Reserve Select of members of the reserve components of the Armed Forces who are eligible to enroll in a health benefits plan under chapter 89 of title 5, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short title.

This Act may be cited as the "TRICARE Reserve Improvement Act".

SEC. 2. Modification of eligibility for TRICARE Reserve Select of certain members of the Selected Reserve.

Section 1076d(a) of title 10, United States Code, is amended—

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ASSOCIATION OF CIVILIAN TECHNICIANS

Terry W. Garnett
National President

Stop the Conversion of National Guard Technicians to AGRs Pending Study of Its Rationality and Readiness Impact, and the Implementation of Measures to Ensure Voluntariness

Dual status National Guard technicians employed under 32 U.S.C. § 709 perform work that in most instances is identical to that of Active Guard and Reserve members (AGRs)—for example, they both repair and maintain military aircraft or surface vehicles—but AGRs, as a workforce, are far more expensive, and less experienced, than technicians.[1]

Nonetheless, the National Defense Authorization Act for Fiscal Year 2019 (2019 NDAA), at the request of the Air National Guard (ANG), reduced the ANG technician end strength by 3,274 and increased the ANG AGR end strength by 3,601, while the 2020 NDAA further reduced technicians by 2,292 and increased AGRs by 2,776.

The Senate Committee's Sharp Questioning of the Rationality of the Conversion

In its June 11, 2019, Report on the National Defense Authorization Act for Fiscal Year 2020, however, the Senate Armed Services Committee (SASC) sharply questioned the rationality of the ANG's conversion of technicians to AGRs:

> The committee is concerned that the Air National Guard did not properly validate its requirements under its realignment initiative, relying instead on a wishlist from the States rather than a rigorous and analytical process to determine what positions should be realigned, could be realigned, and what should remain technician.[2]

To facilitate evaluation of the ANG's conversion process, the SASC Report, at 153, directed

> the Chief of the National Guard Bureau to provide to the committee quarterly reports on the number of positions that have been realigned from technician to

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[1] This is due primarily to AGRs' eligibility to retire at any age—such as 38—after twenty years of service, while technicians are ineligible to retire until at least their late 50s. See, CNA, *Report on the Termination of Military Technician as a Distinct Personnel Management Category* (September 2013), Vol. 1, p. 2 (AGR retirement costs 34% higher than technician retirement costs due to earlier AGR retirement age). To replace a technician who provides 40 years of service, two AGRs who retire after 20 years are required. During the second twenty-year period the retired pay of the first AGR must be paid as well as the active duty pay of the second AGR—an enormous increase in cost. Further, the second AGR starts the second twenty-year period as a new, inexperienced Guard member, while the experienced technician continues to work at peak proficiency. *See*, Institute for Defense Analysis, *Analysis of Alternative Mixes of Full-Time Support in the Reserve Components* (August 2017) (IDA Report) at v (data support "[a]dvantages of the MT [military technician] program [over AGRs] in position stability and career longevity"; further research needed).

[2] S.Rep. 48, 116th Cong., 1st Sess. National Defense Authorization Act for Fiscal Year 2020 (S. 1790) (Committee on Armed Services June 11, 2019) at 152.

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> AGR by state, occupational specialty, and grade, beginning immediately with data available for fiscal year 2019 and continuing quarterly through May 1, 2021.

To our knowledge, the Chief never has complied with this directive.

Compliance should be required. Evidence strongly suggests that the conversion of technicians to AGRs has been anything but rational.

Evidence of the Conversion's Irrationality

In August 2018, an ANG message launching the conversion asserted that the ANG had selected positions for conversion "using 4 guiding principles: [r]eadiness, . . .critical AFSCs, location factors, and special military mission needs," and that conversion of the selected positions "maximizes recruiting, retention, readiness and the overall lethality of our force."[3] A second, contemporaneous message added, "Our FAMs [Functional Area Managers] methodically placed the resources where they anticipated having the greatest impact on military readiness."[4]

This second message said that the States had flexibility to change the positions on the ANG conversion list but warned them:

> The need to maintain program integrity on the UMD [Unit Manning Document] (i.e., keeping the resources [the positions] in the Program Element [technician or AGR] in which it was programmed) stems from the fact that this military technician to AGR initiative was staffed through AF [Air Force], OSD [Office of the Secretary of Defense], and ultimately Congress, and *allowing resources to flow across Program Elements on the UMD* [that is, changing to technician a position programmed by ANG to be AGR, or vice versa] *undermines not only NGB's [National Guard Bureau's] credibility but our rationale for future military technician to AGR initiatives.* Please keep a strategic mindset when considering realignment of these resources as ANG, AF, and OSD leadership expect measurable improvements primarily in terms of your units' C-ratings but also with recruiting and retention of both fulltime and DSG [Drill Status Guard] members. [Emphasis added.][5]

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[3] Message to Air National Guards from ANG Director Lieutenant General L. Scott Rice (August 2018) (copy on file with Association of Civilian Technicians (ACT)).

[4] Message to Air National Guards from Brigadier General Stephen S. Nordhaus (August 2018) (copy of file with ACT).

[5] The C-rating system evaluates "unit manning, equipment, and training" readiness. Senate Committee on Armed Services, 94th Cong., 1st Sess., Hearing on S. 920, Part 3 Manpower (Feb. 24-28 and Mar. 4, 1975) at 1681. "The C-rating legend is as follows: C-1 = fully ready; C-2 = substantially ready; C-3 = marginally ready; C-4 = not ready." *Id.*

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The conversion process in Fiscal Year 2019 did not implement the concepts stated in these August 2018 messages. The States changed 82% of the positions that ANG initially had designated for conversion to AGR.[6] On March 14, 2019, a memorandum by ANG Director Lieutenant General L. Scott Rice dropped all pretense of rational ANG determination of the positions to be converted:

> My staff provided a list of recommended realignment positions to start the realignment process and provide flexibility. *This realignment process allows the "54" to substitute positions throughout their organization and we have flexibility to move the realignment to other units.* [Emphasis added.][7]

The SASC's concern "that the Air National Guard did not properly validate its requirements under its realignment initiative, relying instead on a wishlist from the States rather than a rigorous and analytical process" is therefore well-founded. The irrational implementation of the realignment in Fiscal Year 2019 "undermines not only NGB's credibility but [ANG's] rationale for future military technician to AGR initiatives"—just as the second August 2018 ANG message said.

The ANG's willingness to allow the realignment to proceed in total disregard of its "guiding principles"—which, purportedly, "methodically placed" technician positions on the ANG conversion list according to "critical AFSCs, location factors, and special military mission needs" to "maximize[] recruiting, retention, readiness and the overall lethality of our force"—suggests that the ANG is concerned more with the number of conversions than which positions are converted. Its principal desire is *numerous* conversions.

The Defense Department's report on the feasibility of converting technicians to AGRs suggests this as well. The report says the ANG wants its force mix to be 25,045 AGRs and 8,862 technicians.[8] This is a 10,281 increase of the September 2017 AGRs and a 13,241 decrease of the September 2017 technicians.[9] Yet the report identifies only one career field, pilots, in which retention is a problem and names only four others—Space; Cyber; Intelligence, Surveillance, and Reconnaissance; and Remotely Piloted Aircraft—as

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[6] Adriene R. Dallas, Chief, Labor/Employee Relations Branch, Technician Personnel Division, National Guard Bureau, NCR Teleconference 25 April 2019.

[7] Lieutenant General L. Scott Rice, Director, Air National Guard, Memorandum for the Adjutants General, Subject: Military Technician/Active Guard Reserve (AGR) Realignment (March 14, 2019).

[8] Office of the Under Secretary of Defense for Personnel and Readiness, Report to Congress on the Feasibility and Advisability of Converting Military Technician Positions to Personnel Performing Active Guard and Reserve Duty (Transmitted to Congress September 25, 2017) (Feasibility Report) at 21, Table 3.

[9] The decrease in technicians is greater than the increase in AGRs because some of the technicians are converted to Title 5 employees, who are not required to be military members.

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among those "ideally suited for conversion."[10] The report offers no reason why these four atypical career fields should be converted; but, more important, the report fails to justify the enormous size of the conversion—including conversion of typical maintenance positions—that the ANG desires. The report states no reason why maintenance positions should be converted. It never addresses the subject.[11]

The costly, massive conversion that the ANG desires is not justified by the Defense Department's own Feasibility Report—and also is a threat to readiness.

The Threat to Readiness

Conversion of ANG technicians to AGRs reduces maintenance productivity by decreasing team experience and stability.

AGRs—because of their right to retire at any age after 20 years of service, such as age 38; and their greater frequency of reassignment—are more like active-duty personnel than technicians. Technicians reach normal retirement only in their late fifties or at age 60 and usually spend their entire careers at the same location.

A 2008 RAND Report noted the "striking difference in productivity" between the current technician-majority ANG maintenance units and active-duty counterparts:

> ANG F-16 units . . . meet the required standards for aircraft maintenance with a workforce that [is] about one-third the size of [an] active-duty counterpart. In fact, the number of flying hours generated per maintainer is more than twice as high in an ANG unit.

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[10] Feasibility Report at 6 and 20. Regarding pilots, the report, at 6, states, "MilTech pilots are most affected by the shortfall—only 64 percent of MilTech pilot positions are filled. Many MilTech pilots are believed to have vacated their positions for pilot jobs outside the federal government that offered more pay. By comparison, AGR pilot positions are filled at 87 percent." This statement is misleading. Whether an unfilled pilot position is designated technician or AGR is arbitrary. All of the unfilled positions could be designated AGR positions, resulting in 100% of the technician positions being filled, with the entire shortfall being in the AGR positions. Further, higher private sector pay makes retention of pilots difficult irrespective of whether they are technicians or AGRs. Converting technician pilots to AGRs will not solve the problem, because private sector pay is higher than AGR pay, not just technician pay.

[11] The IDA Report, at v, states that there is no "clearly apparent" "relative readiness benefit" achieved by converting technicians to AGRs and, as noted, also states that data support "[a]dvantages of the MT [military technician] program [over AGRs] in position stability and career longevity." *Id.* The Feasibility Report, at 13, acknowledges this as well: "the turbulence generated by a large scale conversion of dual status MilTechs to AGR over a short period of time would lead to a decline in force experience, capability, and continuity. This decline would be attributable not only to the loss of expertise and continuity inherent in the MilTech force, but also to the likelihood of a significant AGR shortfall."

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RAND Project Air Force, Annual Report (2008) (RAND Report) at 42, 44. The Report explained:

> Greater Experience and Stability in the ANG Workforce Make Its Aircraft Maintenance Units More Productive Than Their Active-Duty Counterparts
> . . .
> Besides having an average of only seven years of experience, . . . active-component maintainers generally move to a new assignment every three years. Even if they work on the same airframe or perform the same type of repair, there is a certain amount of turbulence each time new teams are formed. On the other hand, ANG teams are relatively stable. *The average full-time technician has over 15 years' experience and has been at one location most of his or her career.*

Id. at 44-45. (Emphasis added.) Converting ANG technicians to AGRs makes ANG maintenance units more like active-duty units. Due to identical retirement rights, the average experience level in an AGR-majority unit sinks toward the seven years typical of active-duty units.[12] And, because AGRs may apply for vacant positions nationwide,[13] maintenance teams become less stable, with more frequent turbulence.[14]

Technician-majority ANG maintenance units are three times as productive as their active-duty counterparts—a "striking difference in productivity." RAND Report at 42. Converting technician-majority units into AGR-majority units makes them more like active-duty units, reducing productivity.

Voluntariness Has Not Been Ensured

In Fiscal Year 2019 evidence emerged that the ANG's conversion of technicians to AGRs was coercive. Some State Guard PowerPoint briefings told technicians occupying positions targeted for conversion that, if they declined to convert, they would be reassigned to, or even be required to compete for, other technician positions; and, if not reassigned or

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[12] AGR retirement rights also make AGR-majority units far more costly than technician-majority units. *See*, CNA, Report on the Termination of Military Technician as a Distinct Personnel Management Category (September 2013), Vol. 1, p. 2 (AGR retirement costs 34% higher than technician retirement costs due to earlier AGR retirement age). To replace a technician who provides 40 years of service, two AGRs who retire after 20 years are required. During the second twenty-year period the retired pay of the first AGR must be paid as well as the active duty pay of the second AGR—an enormous increase in cost. Further, the second AGR starts the second twenty-year period as a new, inexperienced Guard member, while the experienced technician continues to work at peak proficiency.

[13] *See, e.g.*, Lieutenant Colonel Beegles, Director Human Resources Office, California National Guard, AGR Realignment PowerPoint document (2018) at slide 4 (announcing nationwide recruitment to fill AGR positions).

[14] *See*, Institute for Defense Analysis, *Analysis of Alternative Mixes of Full-Time Support in the Reserve Components* (August 2017) (IDA Report) at v (data support "[a]dvantages of the MT [military technician] program [over AGRs] in position stability and career longevity"; further research needed).

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competitively selected, would be subject to separation from employment by involuntary reduction in force (RIF).[15] In response to congressional communications saying such methods are unacceptable, ANG Director LTG Rice issued a March 14, 2019, memorandum stating, "In the event a Military Technician declines to participate [in the conversion to AGR] no further action will be taken against the individual or their position."[16] The FY 2020 NDAA requires that conversion to AGR be voluntary, not coercive. National Defense Authorization Act for Fiscal Year 2020, P.L. 116-92 (December 20, 2019) § 413(b).

Voluntary implementation, however, requires more than the absence of threats. To make voluntary decisions, technicians must be fully informed of all factors relevant to their decisions whether to convert.

Conclusion

The 2021 NDAA should include no reduction of the ANG technician end strength.

The National Guard Bureau reports directed by the SASC 2020 NDAA Report should be required by the text of the 2021 NDAA.

The Department of Defense should be required to prepare a report on (a) the rationality of its 2018 criteria for selecting technician positions for conversion, the extent to which those criteria have not been followed, and the consequent impact on the rationality of the conversion; and (b) the impact on readiness of the conversions to date and any conversions proposed for the future.

The Department of Defense should be required to prepare and communicate, orally and in writing, to all ANG technicians a report accurately stating all factors relevant to their decisions whether to agree to convert to AGR. Preparation of the report should include consultation of all exclusive union representatives of technician employees; the report should include, as addenda, all comments that any exclusive representative desires to present; and all of the required oral communications to technicians should include opportunity for full participation and communication by the exclusive union representatives.

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[15] Representative PowerPoint briefings are on file with ACT.
[16] Lieutenant General L. Scott Rice, Director, Air National Guard, Memorandum for the Adjutants General, Subject: Military Technician/Active Guard Reserve (AGR) Realignment (March 14, 2019).

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