United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 00-1485

September Term, 2001

Filed On: November 9, 2001 [648868]

Association of Civilian Technicians, New York State Council,

Petitioner

v.

Federal Labor Relations Authority,

Respondent

———

Petition for Review of an Order of the
Federal Labor Relations Authority

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Before: GINSBURG, *Chief Judge*, HENDERSON, *Circuit Judge* and WILLIAMS, *Senior Circuit Judge*.

A M E N D E D   J U D G M E N T

This appeal was considered on the record from the Federal Labor Relations Authority and on the briefs and arguments of the parties. The court has determined that the issues presented occasion no need for an opinion. *See* D.C. Cir. Rule 36(b). It is

ORDERED AND ADJUDGED that the petition for review should be DENIED. Both parties agree that petitioner's collective bargaining proposal would require the Guard to make civilian technicians eligible to apply for many of the positions at NEAD, implicating the Guard's right to determine its organization. Petitioner argues that the proposal requires the Guard to make civilian technicians eligible to apply for NEAD positions only because it incorporates the Guard's regulation, ANGI 36-101, to that effect. Petitioner then contends that a proposal that merely requires the Guard to comply with its own regulation cannot impermissibly infringe upon the Guard's right to determine its own organization; all the Guard need do to escape the burden is to change its regulation. We conclude, however, that the FLRA correctly determined that ANGI 36-101 does not require the Guard to make

civilian technicians eligible to apply for NEAD positions; it merely requires the Guard to identify positions that "theoretically" may be filled by civilian technicians. Therefore, petitioner's argument fails at the first step.

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41.

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk