

**GUIDANCE ON SENIORITY POLICY AMENDMENTS
ADOPTED AT NATCA'S SEPTEMBER 2004 NATIONAL CONVENTION**

(Issued October 1, 2004)

The New Seniority Policy

Delegates to NATCA's September 2004 national convention voted to amend the seniority policy contained in NATCA By-Law A-3 as follows:

The following shall be used to determine seniority for the National Air Traffic Controllers Association:

- a. Cumulative NATCA Bargaining Unit Time;*
- b. First Tie Breaker: NATCA Bargaining Unit Time;*
- c. Second Tie Breaker: EOD/FAA;*
- d. Third Tie Breaker: SCD;*
- e. Fourth Tie Breaker: Lottery (the lottery to be determined at the local level).*

For the purpose of facility release policies, seniority will be determined by facility time only as a bargaining unit member at that present facility.

"Cumulative NATCA Bargaining Unit Time" is derived by totaling all time together spent in each of the NATCA bargaining units.

"NATCA Bargaining Unit Time" is defined as the total time in a given bargaining unit represented by NATCA and as defined by the FLRA petition for representation of that unit.

Implementation of the Policy

Article IV, Section 4 of the NATCA Constitution provides that "The President shall be the chief executive officer of the Association and shall be responsible for implementing all policies established by . . . the National Convention." Pursuant to this provision, the President held implementation of the amendment in abeyance until October 1, 2004 in order to facilitate a review and analysis of several key legal and practical issues concerning adoption and implementation of this policy.

<p>Upon completion of a comprehensive review and analysis of the seniority policy adopted by the delegates to NATCA's September 2004 national convention and in accord with the authority vested in the President pursuant to Article IV of the NATCA Constitution, the President of NATCA has determined that the seniority policy is legal, enforceable, and shall be the seniority policy of the union.</p>

The Legal Precedent that Permitted the Delegates to Amend the Seniority Policy at the National Convention

1. Power to Amend By-Laws Vested in Delegates to National Convention.

Article VIII of NATCA's Constitution allows for the amendment of the organization's by-laws. Section 7 of Article VIII provides the basis for the amendment of by-laws to be done at the national convention. The delegates to the September 2004 national convention acted in accordance with the provisions of Article VIII when the seniority policy was changed.

2. NATCA's Initial Adoption of a Seniority Policy at the September 1996 National Convention.

Despite the language in Article VIII allowing for amendment of the union's by-laws by the delegates to the national convention, such changes have not gone unchallenged. NATCA initially adopted a national seniority policy at its September 1996 national convention. The policy was challenged by the FAA and individual bargaining unit employees who filed unfair labor practice charges with the Federal Labor Relations Authority ("FLRA"). These unfair labor practice charges claimed that NATCA breached its duty of fair representation by adopting a seniority policy, a condition of employment left to the discretion of the union pursuant to the terms of the collective bargaining agreement between the union and the FAA, at a union convention from which non-union members were excluded.

3. The Administrative Law Judge's Decision Finding a Breach of the Union's Duty of Fair Representation

An administrative law judge held a two-day hearing on these charges in May 1997 and issued a decision on July 17, 1997 in which he concluded that the union had violated its duty of fair representation by determining a condition of employment at a union convention which non-union members were not allowed to attend. In his decision, the administrative law judge likened adoption of the policy at convention to determination of a condition of employment by polling and noted that it was established law that union members and non-union members alike must be included when a union conducts a poll to determine a condition of employment. NATCA appealed the administrative law judge's decision to the FLRA. While this appeal was pending, NATCA prepared for and held another national convention in September 1998. In an attempt to comply with the administrative law judge's decision while the appeal remained undecided, NATCA provided non-union members with an opportunity to register to speak on proposed modifications to the national seniority policy at the 1998 national convention. No non-union members availed themselves of this opportunity.

4. The FLRA's Decision Reversing the Administrative Law Judge and Finding that NATCA Acted Legally when it Adopted a Seniority Policy at the National Convention

On June 30, 1999, the FLRA issued a decision *reversing* the administrative law judge's decision and finding that NATCA *acted legally* when its union delegates adopted a national seniority policy at the 1996 national convention. NATCA and Ruckman, 55 FLRA 601 (1999). The FLRA concluded that the delegates to the 1996 convention were acting in a representative capacity for union members and non-union members on this issue and that *adoption of the policy at the convention from which non-union members were excluded therefore did not constitute a breach of the duty of fair representation*. The FLRA distinguished the actions of the delegates at the 1996 national convention from cases where a contract leaves a condition of employment to the discretion of the union and the union takes a poll to determine that condition of employment. The FLRA reasoned that adoption of a seniority policy by delegates to a union convention who are acting in a representative capacity for both union members and non-union members is wholly distinct from polling cases.

The FLRA offered the following analysis and justification for its decision in NATCA's favor:

[I]f the union delegates final decision-making [on a condition of employment] to a vote of employees, then both union members and non-union members must be included in the voting. . . . Here, the [Union] did not determine the seniority policy by a vote of its members. It determined its seniority policy by a vote of delegates to its national convention. These delegates operated as representatives of the employees. . . . The delegates were, thus, acting as representatives of the entire bargaining unit. . . . As long as the decision-making power is vested in union representatives generally, and those representatives properly carry out their representative functions, [other FLRA cases] do not dictate that non-members of the union be included as decision-makers.

The FLRA's 1999 decision stemming from the actions of the delegates to NATCA's 1996 national convention is now the accepted legal precedent with regard to adoption of a seniority policy by delegates to a union convention, remains unchallenged, and is cited as the leading case on this issue in the foremost reference book on federal sector labor relations.

As a result, the actions of the delegates to the September 2004 national convention with regard to the manner of adoption of the modifications to the seniority policy complied with the applicable legal standard and are legally sound.

Questions and Answers Concerning Implementation of the NATCA Seniority Policy

Q: What determines seniority?

A: Cumulative NATCA bargaining unit time.

Q: What is cumulative time?

A: It is the total of all time spent in any of the NATCA bargaining units.

Q: What happens if there is a tie?

A: The first tie breaker is used.

Q: What is the first tie breaker?

A: The first tie breaker is determined by NATCA bargaining unit time.

Q: What is NATCA bargaining unit time?

A: It is defined as the total time in a given bargaining unit represented by NATCA as defined by the FLRA certification of that unit. The date of the certification is not relevant because NATCA bargaining unit time can include pre-certification time if the position is one subsequently included in the certification. What is relevant is the date an employee entered a unit that is now represented by NATCA.

Q: What happens if there is a second tie?

A: The second tie breaker is used.

Q: What is the second tie breaker?

A: The second tie breaker is EOD (entrance on duty)/FAA date.

Q: What is EOD date?

A: The date an employee entered on duty as an employee of the FAA for the first time.

Q: What happens if there is a third tie?

A: The third tie breaker is used.

Q: What is the third tie breaker?

A: The third tie breaker is SCD (service computation date).

Q: What is SCD (service computation date)?

A: It is a date assigned by the government that is used for benefit (leave, retirement) determinations and is based on how long a person has been in the federal service. This can include active military time or service with another federal agency. This date is found on an employee's SF-50.

Q: What if there is still a tie?

A: The fourth tie breaker is used.

Q: What is the fourth tie breaker?

A: The fourth tie breaker is a lottery to be determined at the local level.

Q: How is seniority treated for the purposes of facility release policies?

A: Seniority will be determined by facility time at their current facility and only for time they are in NATCA bargaining units.

Q: How does the new seniority policy affect the bidding process?

A: Any bidding process based on seniority that commenced prior to October 1, 2004 should continue in accordance with the old seniority policy. In other words, if you have already begun your bidding process, you are not expected to stop, nor are you expected to rebid your schedule or leave. The effect of any such bidding should not last longer than one year (i.e., if you bid in September of 2004 for a schedule which is to run from January-December of 2005, that schedule stands in full force and effect using the old system. The next schedule or leave period bid must be bid using the new seniority system.)

For facilities which are commencing bidding on or after October 1, 2004, the following transitional implementation rules shall be administered:

1. If you are able to create a list using locally available data, the new seniority system must be used. (For example, a small local where the numbers and types of employees are at a minimum and the list can be created, maintained and organized.)
2. If you are unable to create a list using locally available data you are directed to proceed with bidding using the old seniority system until such time as you have gathered the data necessary to effectuate the change, but

in no case later than December 31, 2004. ALL BIDDING DONE ON OR AFTER JANUARY 1, 2005 MUST BE DONE IN ACCORDANCE WITH THE NEW SENIORITY POLICY.

3. Any facility which is unable to compile the data necessary to effectuate a change to the new seniority policy must notify the NATCA National President in writing of their circumstances prior to December 31, 2004. The President shall, in accordance with Article IV, Section 4 of the NATCA Constitution, make a full and final determination with respect to such facilities' bidding process.

Q: What is the starting point for counting time?

A: The starting point in time corresponds with the start date listed on an employee's SF-50 assigning him or her to a bargaining unit position. Once the employee enters the bargaining unit, all subsequent time counts toward seniority as long as the employee is employed by the FAA, in a NATCA bargaining unit position, and supported by the dates on the employee's SF-50s.

Q: What if an employee is assigned to a facility and is subsequently assigned to the academy?

A: The NATCA bargaining unit time will be the effective date the employee is assigned to a position that complies with the FLRA certification. The effective date will be the date on the employee's SF-50. Any time spent as a student at the FAA academy for initial academy training as a 2152 is expressly excluded under the FLRA certification and does not count for seniority.

Q: What if an employee attends initial training at the academy and subsequently is assigned to a bargaining unit position?

A: The NATCA bargaining unit date for seniority purposes will be the effective date assigning an employee to a bargaining unit position. (In this case, after training.)

Q: Does time at the academy ever count?

A: Any time spent as a student at the FAA academy for initial academy training as a 2152 does not count for seniority. However, time spent at the academy for other training (i.e., RTF) counts as NATCA bargaining unit seniority as long as the employee is in a NATCA bargaining unit position, supported by the date on their SF-50.

Q: Does CTI, FSS, co-op, pre-developmental, ATA or flight service position time count?

A: No, since these positions are not in any NATCA bargaining unit.

Q: How about Department of Defense ATCS Time?

A: Seniority accrued at DOD facilities certified by the FLRA with NATCA as the exclusive representative shall count as NATCA bargaining unit seniority.

Q: How about PATCO time?

A: If an individual had time in a position that would have been covered by a NATCA bargaining unit certification (had such a certification existed), that time is credited. For example, the time a fired PATCO employee was outside the bargaining unit does not count. However, all the time prior to their removal from the FAA spent in a covered bargaining unit position will count toward NATCA bargaining unit seniority.

Q: How is seniority defined when an employee voluntarily or involuntarily leaves the bargaining unit?

A: Any bargaining unit employee that voluntarily or involuntarily leaves the bargaining unit shall stop accruing seniority. Seniority will again start accruing once the employee returns to a NATCA bargaining unit. (Note: Employees that serve in a position for NATCA, i.e., liaisons/technical representatives, remain in the bargaining unit and continue to accrue seniority.)

Q: How is seniority defined when an employee leaves the bargaining unit voluntarily or involuntarily as a supervisor?

A: An employee who voluntarily or involuntarily leaves the bargaining unit will not accrue seniority while serving as a supervisor or in any management position.

Q: How is seniority affected by disciplinary action?

A: In most cases, disciplinary action does not change the bargaining unit status of an employee. However, in the event that an employee is disciplined in a manner that removes an employee from the bargaining unit or reduces the employee's seniority, and the disciplinary case is successfully appealed, seniority will be restored consistent with the arbitrator or other appropriate authority's decision. In the event of an unsuccessful appeal, no seniority would be restored.

Q: How should we collect data for seniority purposes?

A: Each individual should request a copy of their respective OPF (Official Personnel File) and instruct the Agency to deliver the information to the local facility representative. A sample request form is attached. Any employee who objects to having the agency produce his or her OPF to the facility representative may request his or her records and provide copies of the SF-50s to the facility representative for calculation of their seniority date. (Note: FAA maintains employee data in several different files and/or formats; e.g., training folder, IPPA report, CPMIS data, Official Personnel Folder, SF-50, etc.) In the event that there is a discrepancy between any of the dates needed for computing seniority, the employee's SF-50 will be the governing document.

Q: How do I know what the agency is providing me is accurate?

A: That will be up to each employee to determine from their own personal records.

Q: What if an employee refuses to provide data for computing seniority?

A: The employee will be considered with no seniority because there is no information to utilize and will be placed at the bottom of the seniority list.

Q: What is the national office doing to get this information?

A: The national office is requesting information from the FAA and will use all means legally available to obtain the employee information necessary to comply with By-Law A-5, which refers to "Seniority Policy Administration."

Q: Can implementation of this policy be postponed pending implementation of By-Law A-5:

A: No. The new seniority policy is legal, enforceable and shall be the seniority policy of the union, effective immediately and in accordance with the terms of this announcement.

Q: Who should I contact if I have any questions about the new seniority policy?

A: Most seniority questions can be answered by your facility representative, your unit representative, or your NATCA local president. In the event you have further questions, you are encouraged to communicate with your Regional Vice President, the NATCA Executive Vice President, or the NATCA President. The purpose of this guidance is not to confuse but to clarify. Your understanding of this policy and its application is essential for successful implementation in the field.

SAMPLE INFORMATION REQUEST

Date

Air Traffic Manager
ABC Tower
Hometown, USA 12345

Re: Information Request

Dear Mr./Ms. Manager:

In order to properly determine seniority for the bargaining unit members at XYZ Facility, the union requires certain information. Please consider this request in accordance with 5 U.S.C. 7114 (b) (4). This information is necessary to comply with NATCA's seniority policy. This information should include, but not be limited to:

1. My Record of Employment History depicted on the Integrated Personnel and Payroll System (IPPS);
2. My Enter on Duty Date (EOD) and Service Computation Date (SCD); and
3. My SF-50s.

I request that this information be delivered to my union representative within twenty days of the receipt of this letter. If all the information requested cannot be delivered within the specified time frame, I request that whatever is available be delivered within that time frame and the rest be delivered as soon as it is available.

If you have any questions regarding this request, please contact me or my union representative at your earliest convenience,

Sincerely,