



**Federal Aviation
Administration**

U.S. Department of Transportation Federal Aviation Administration

Submission to the United States Congress
Concerning the Agency's Collective Bargaining Proposal
to the National Air Traffic Controllers Association

April 5, 2006

TABLE OF CONTENTS

<u>Title</u>	<u>Page Number</u>
Executive Summary	1
I. Introduction	7
II. Statutory Background	8
A. The FAA Administrator Retains Final Authority to Set Pay and Benefits for All Employees Following Good Faith Bargaining and Review by Congress	8
B. History of Litigation Over the FAA's Unique Impasse Resolution Procedure	10
III. Background	11
A. Composition of the Bargaining Units Involved in the Present Negotiations	11
B. History of Negotiations	11
IV. Negotiations Environment	13
A. FAA's Fiscal Situation	13
B. FAA's Bargaining Objectives: Reforming the Current Agreement	14
V. Issues in Dispute: Changes to Compensation and Benefits	19
A. Agency Proposal to Establish New Air Traffic Specialized Pay Plan (ATSPP)	19
1. Overview	19
2. Summary of the Status Quo	20
3. The Agency's Proposal	21
4. The Union's Proposals and the Agency's Response	23

<u>Title</u>	<u>Page Number</u>
B. Annual Pay Increases	25
1. Overview	26
2. Summary of the Status Quo	26
a. The FAA's Core Compensation Plan – Non-Controllers	26
b. The Controllers' AT Pay Plan	27
3. The Agency's Proposals	29
a. Proposed Changes in the Annual Organizational Success Increase (OSI)	29
b. Proposed Changes in the Annual Superior Contribution Increase (SCI)	29
c. Proposed Changes in Eligibility Criteria	30
d. Proposed Changes Regarding the Administration of Pay Increases	30
4. The Union's Proposals and the Agency's Response	31
C. Pay Premiums	33
1. Overview	33
2. Controller Incentive Pay (CIP)	33
a. The Status Quo	33
b. The Agency's Proposal and the Union's Objections	34
3. Controller-in-Charge (CIC) Premium	35
a. The Status Quo	35
b. The Agency's Proposal and the Union's Objections	36
D. Pay Setting and Pay Retention	37
1. Overview	37
2. Summary of the Status Quo	38
a. Pay Setting for Trainees	38
b. Pay Setting for Transfers	39
c. Pay Setting for Facility Upgrades	40
d. Pay Setting for Facility Downgrades and Pay Retention	40

<u>Title</u>	<u>Page Number</u>
3. The Agency's Proposals	41
a. Pay Setting for Trainees	41
b. Pay Setting for Transferees	42
c. Pay Setting for Facility Upgrades	43
d. Pay Setting for Facility Downgrades and Pay Retention	43
4. The Union's Proposal and the Agency's Response	43
E. Union Proposals for New Benefits and Other Changes to the Personnel Management System	44
1. Annual Leave	44
2. Child Care Subsidy	44
3. Tuition for Dependent Children Outside the Continental U.S.	45
4. Student Loan Repayment Program	45
5. Convert NOTAM Specialists to the AT Pay Plan	46
VI. Issues in Dispute: Other Changes to the Personnel Management System	46
A. Annual Leave	46
1. "Prime Time" Leave Periods	47
2. Credit Hours to Cover for Denied Leave	47
3. Procedures for Cancellation of Leave	47
B. Work Assignments	48
C. Holidays	49
D. Relief Breaks	50
E. Overtime	51
1. Overtime for Union "Official Time"	51
2. Cancellation of Overtime	51
3. Guaranteed Minimum Overtime Pay	52
F. Dress Code	52

<u>Title</u>	<u>Page Number</u>
VII. Other Issues in Dispute Not Part of This Submission	53
A. Prohibited Subjects of Bargaining	53
B. Permissive Subjects of Bargaining	54
VIII. Conclusion	54

Attachment: Relevant Statutes

Appendices

A. Proposals in Dispute

1. Agency Proposals
2. Union Proposals

B. Tentatively Agreed Upon (TAU'd) Articles

Executive Summary

Background

Congress enacted “personnel reform” for the Federal Aviation Administration (FAA) ten years ago, as part of the 1996 transportation appropriations act. The law required the Agency to put in place a new personnel system by April 1996. The purpose of the legislation was to enable the Agency to create a more flexible system that would give the FAA a greater ability to attract and retain highly qualified technical personnel at market-based rates. The reform was also intended to foster accountability by allowing the Agency to link employee pay to individual and Agency performance.

In 1996, as part of FAA reauthorization, the Agency’s statute was amended explicitly to bar the Administrator from negotiating with labor unions over compensation and benefits, except under limited circumstances in which the Agency was making changes in the personnel system first put in place in April of that year. Even in such bargaining, the parties were directed by Congress to “use every reasonable effort to *find cost savings and to increase productivity*” for each bargaining unit. The same law also provided that in the event the negotiating parties reached impasse, then following federal mediation, the Administration could implement its proposal 60 days after submitting its proposal to Congress. (49 U.S.C. §§ 106(l) and 40122(a)).

As the Agency began to implement the new law, these provisions were liberally interpreted so as to allow the Agency to bargain over wages with each of its unions on an ongoing basis. In 1998, the FAA signed a long-term contract with the Agency’s air traffic controllers. Despite promises that the agreement would cost just \$200 million in increased compensation over its first three years, all of which would be offset by gains in efficiency, the contract actually cost many times that amount and the gains did not materialize. With the compounding effect of mandated annual increases, controller compensation has far outpaced the rest of the FAA as well as the private and public sectors as a whole. The contract also unwisely tied the Agency’s hands on key management prerogatives (like scheduling and staffing levels) and imposed expensive and wasteful practices on the Agency.

The FAA and the National Air Traffic Controllers Association (NATCA) began negotiations to replace the current agreement in July 2005. In the meantime, all the key terms of the contract (including automatic pay hikes) continue as a result of an “evergreen” clause. Despite extensive negotiation over nine months, including four weeks of mediation with the Federal Mediation and Conciliation Service, the Parties failed to reach agreement on several proposed articles affecting the compensation and benefits, as well as work rules, for three NATCA bargaining units. Therefore, as required by law, the FAA is transmitting its proposals, along with NATCA’s proposals and objections, to Congress.

Compensation and benefits

As a result of the 1998 agreement, the average controller in fiscal year (FY) 2005 enjoyed a compensation package worth \$165,900, including \$113,600 in base salary and locality, \$14,900 in premium pay, and \$37,400 in benefits. This represents a 75% increase since that contract was put into effect, which has left controller compensation 42% higher than all other FAA employees, including aviation safety inspectors, airway technicians, test pilots, and other professionals. The escalation in controller compensation has resulted this year in more than 1,600 controllers making more in pay than each member of Congress. The cost of this escalation is huge: since the current contract took effect in 1998, faster pay growth for NATCA compared to the rest of the Agency has cost taxpayers some \$1.8 billion cumulatively in extra compensation. Our annual payroll (personnel and benefits costs) for air traffic controllers jumped from \$1.4 billion (1998) to \$2.4 billion (2005). And as productivity gains bargained for in 1998 never materialized, controller labor costs per flight steadily rose from \$83 to \$131 by 2005.

Whether or not such dubious financial results could have been predicted, the Agency clearly cannot afford to keep the current contract going forward. We must make significant and meaningful change in the wage structure. The Agency's goal with its final proposal is to introduce a revamped pay system for air traffic controllers that is affordable given the Agency's financial outlook, links future pay increases explicitly to Agency and individual performance, and allows us to effectively recruit thousands of new hires to replace controllers retiring over the next several years.

In constructing a new pay system, we recognized that we needed to find a way to balance the legitimate interests of current employees while allowing the Agency to transition to a new, market-oriented pay system. That's why **our proposal preserves the salaries and benefits of all incumbent employees**. In fact, despite the Union's public relations claims,¹ we have never demanded salary cuts or reductions in the generous benefit package controllers get, even as the airline industry we serve has repeatedly reduced wages and benefits for all of its skilled professionals.²

¹ Unfortunately, a NATCA radio campaign grossly mischaracterizes the Agency's last offer, asserting that "the FAA wants to slash salaries up to 30 percent and then impose a 5-year pay freeze that would worsen the staffing crisis and could put safety at risk." This is patently false: Under our proposal no controller will take a salary cut, much less "30 percent."

² The Air Transport Association has calculated the reduction in total salaries and fringe benefits at the six largest domestic air carriers from 2001 to 2005 at \$8.336 billion. (2001 was the peak compensation year for airlines.)

Specifically, under the Agency's final contract offer:

- We will implement a new air traffic pay plan with salary bands that line up with the rest of the FAA workforce, while keeping existing controllers essentially whole no matter where they fall with respect to the bands. Our final offer – indeed, every offer we made in negotiations – explicitly “grandfathers” the annual salary (base and locality pay) of every controller to the extent it exceeds the new caps under the revised pay plan.³ We believe this is a major concession on the Agency's part, as more than 56% of our current controller workforce already enjoys base salaries in excess of GS-14 maximums and in excess of the corresponding pay bands for FAA's senior managers.
- The revised pay plan is designed to be attractive to potential new hires as well, who will be joining public service in the thousands over the next several years. The plan was derived by taking the pay system used to compensate most other FAA employees and structuring it to match the classification levels in the controllers' current system. The resulting pay scales are still generous. Under our proposal, the average controller hired in FY 2007 would have a base salary, including locality, of \$84,200, after five years on the job. With premium pay, average annual cash compensation would be \$93,400 and total compensation (including benefits), \$127,600. We are confident that remuneration of new hires at these levels – which will still be above the rest of the FAA workforce -- is more than adequate for recruitment and retention.
- Our pay plan links future increases to agency-wide and individual performance, as is already the case for most of the FAA under our “core compensation” plan, the cornerstone of our personnel management system. We will no longer guarantee automatic increases above the civil service average even when the FAA fails to meet its performance objectives – as the current contract unwisely does. We will no longer raise the maximums in every pay band each year regardless of market data, as the current contract requires. These practices have created a growing pay inequity between controller salaries and those of other FAA employees – a gap that now stands at \$48,700 per employee up from \$18,700 in 1998.
- Contrary to the Union's assertions, there is no “pay freeze” for anyone under the Agency offer. Controllers with salaries above the pay band will still receive locality increases in their salaries. They will also be eligible under the FAA's personnel management system for the two other primary annual increases, an organizational success increase (OSI) and a superior contribution increase (SCI). Like other employees, if they are above the bands, then they will receive lump sum cash awards equal to the full amount of any foregone agency-wide increase or individual merit

³ When NATCA complains of our proposal “slashing salaries,” they are apparently referring to the Agency's proposed reductions in nominal pay bands not actual compensation. Of course, reductions in these pay bands will have virtually no effect on the current workforce, who will be grandfathered at their existing salaries.

increase. The net result? Our projections show that over the proposed five-year term of the contract, the average current controller can expect an increase in salary and locality from \$113,625 to \$122,500 and in cash earnings (including premium pay and performance awards) from \$128,600 to \$139,900. Of course, existing employees with base pay below the new ceilings, as well as all new hires, will remain eligible to receive all annual increases as adjustments to their base pay.

- Premium pay will be reduced modestly from current levels under the Agency’s final proposal, which protects 82% of the average controller’s premium earnings during the life of the contract. All controllers will continue to be eligible for overtime, holiday, Sunday, night differentials, and on the job training instructor pay (OJTI) at the existing rates. Controller Incentive Pay (CIP), an extra locality adjustment unique to the Air Traffic Organization, and only applicable to about a third of the controller workforce, will be phased out evenly over five years. The current CIP program has failed to accomplish its objective of providing incentives for hard-to-staff facilities, while costing taxpayers \$29.5 million a year.⁴ We will also discontinue one other premium that has produced little benefit for the taxpayer, Controller-in-Charge (CIC) pay. Both Congress and the Inspector General of the U.S. Department of Transportation have been highly critical of the CIP and CIC premium programs.
- We will maintain all benefits currently provided to controllers, worth on average \$37,000 a year – and more for controllers hired since 1986 when the Agency increased the annual retirement contribution rate for employees in the Federal Employees Retirement System (FERS), now at 23.1% of salary (about twice that of the rest of FERS participants). But in doing so, we could not accept NATCA’s multiple demands for new, special perquisites that we don’t provide to other FAA employees, including private school tuition for dependents outside of the continental U.S., a substantial child care subsidy, and up to \$60,000 per controller in student loan repayments. Nor could we adopt the Union’s proposal that controllers be allowed to “sell back” to the taxpayer all unused annual leave.
- Pay rules that set pay for controllers will be reformed so that controllers’ pay is commensurate with the level of work they are performing. The current rules that set pay when controllers are in training, when they voluntarily transfer between facilities, and when their facility’s classification level is upgraded are designed to provide them with significant pay increases before they demonstrate their competence in different positions. When a facility’s classification level is downgraded, the current rules allow for controllers to retain their higher pay even though they are doing less complex work. The Agency’s proposals are designed to ensure that controller pay is commensurate with the level of work being performed.

⁴ The CIP cost is for both the Air Traffic Control Specialist and Traffic Management Coordinator/Specialist bargaining units.

The Union's final proposal on pay and benefits did not meet the Congressional direction that the FAA replace automatic pay increases with a performance-based system. Nor does it address the Agency's pressing need to restore internal pay equity. While styling its last offer as a large "pay cut" that would have somehow "saved" the Agency \$1.4 billion over five years, NATCA's actual proposal would perpetuate nearly all of the objectionable pay provisions (as well as several antiquated work rules) in the current agreement. This combination makes their proposal unaffordable to the taxpayer and unfair to the rest of the FAA's highly skilled and equal talented workforce.

The Union's proposal would not actually cut anyone's pay. Instead, the nominal pay band minimums would temporarily drop by less than 3 percent, and maximums by less than 10 percent, effectively keeping the rich pay scales almost where they are today. The effect of this offer is to deprive the taxpayer of most of the benefits from bringing in new employees at more market-oriented rates. In the meantime, payroll costs for all air traffic controllers would continue to rise. Worse, after the term of the agreement, the Agency would return to the system of guaranteed pay hikes and automatic increases in salary bands – with no relation to performance – that already has cost taxpayers \$1.86 billion more than would have been the case if controllers had simply received raises at the same rate as their peers in the rest of the Agency. And the gap between controllers and all other FAA employees would continue to increase dramatically under NATCA's demands.

Other changes in the personnel management system, including work rules

In an era in which demands on the system are growing while revenues per operation are shrinking, we must take advantage of every opportunity for greater productivity. Our final offer keeps intact most of the benefits of the current working environment that reflect the unique demands placed on air traffic controllers, while ending practices that simply increase taxpayer expense with no offsetting improvement. For these reasons, the Agency and NATCA reached impasse over FAA's proposal to modify archaic work rules that, in our judgment, have impeded the efficiency of our air traffic operations. This includes several contract provisions that decrease scheduling flexibility and needlessly increase overtime expenditures.

For example:

- The current agreement severely limits the Agency's flexibility to decrease staffing levels on holidays when traffic declines from daily norms; thus, controllers who are scheduled to work such days receive double pay regardless of whether they are ultimately needed.
- The agreement guarantees every controller (regardless of seniority) two consecutive weeks of vacation, usually during the height of the busy summer travel season; as a result, the Agency must pay overtime rates to fill out its daily schedule. NATCA not only wants to retain this entitlement, they would make it more expensive for the taxpayers. The Union's proposal would require the Agency to buy back any unused

annual leave that could “not be scheduled” to meet the controllers’ vacation requests.

- The current contract provides controllers a break every two hours regardless of workload, staffing, and traffic levels. The Agency has no objection to the idea of breaks at regular intervals, but breaks should be determined by supervisors based on the actual operational environment. Moreover, having such a hard and fast requirement in the contract has been the font of literally thousands of Union grievances. Controllers regularly file grievances if the Agency supervisor keeps the controller “on position” one minute over the two hour limit.
- The current contract permits the Agency to assign tasks to controllers that have a reasonable relationship to air traffic control, such as developing new operational procedures. The Union’s proposal, however, would eliminate this flexibility and preclude the Agency from assigning any duties to controllers that do not consist of the separation of aircraft. We believe that facility managers and supervisors must have the right to assign operational duties (or paid administrative tasks) as required for the efficiency of the National Airspace System.

The Agency was able to agree with the Union on many important issues during the course of extensive negotiations and mediation. Nonetheless, several fundamental issues remain unresolved. On the key economic issues, the Parties’ competing offers are not close: a \$600 million gap separates the offers over five years, and that number increases to \$ 3.7 billion over ten years principally because NATCA’s proposal would perpetuate the current pay system of excessively generous pay bands and automatic, above-normal pay growth after the initial term ends.

Our proposals are based solidly on a clear Congressional mandate to implement a personnel system that is both cost efficient and meets the unique needs of the Agency’s workforce. To that end, the Agency has proposed to extend to the controller workforce a salary structure in which pay increases reflect both organizational and individual performance. At the same time, our proposal restores management’s prerogatives and responsibilities with regard to directing FAA operations.

After careful consideration, the Agency concluded that the necessary cost savings and efficiencies would not be achieved by agreeing to the Union’s proposal. In the end, as much as the FAA would have preferred to have reached a comprehensive agreement, the Parties have been unable to do so. The Parties are at impasse. Thus, under the process established in the Federal Aviation Act and discussed earlier, the FAA must submit both sides’ proposals to Congress for a 60 day review before acting to implement the Agency’s terms.

I. Introduction

In connection with its ongoing negotiations with the National Air Traffic Controllers Association (NATCA) over the Federal Aviation Administration's (FAA's) personnel management system and as required by law (49 U.S.C. Section 40122),⁵ we are transmitting to Congress the FAA's proposal together with a summary of NATCA's objections and its proposals. Below, we discuss principles that are at stake in this contract and, in relation to those, several contract articles that were unsettled when mediation ended. The FAA's intention is to implement its proposed terms and conditions, including the 101 articles agreed to in negotiation and the fourteen open articles submitted herein,⁶ following the statutorily required 60-day notice to Congress.

At the outset it is important to emphasize what this dispute is not about: "salary cuts" or "pay freezes." Neither the FAA's proposal nor NATCA's offer would actually reduce current spending on the air traffic controller workforce. Neither offer would reduce salaries. To the contrary, the Parties essentially disagree about the size of future increases for NATCA's current members, the whole notion of performance incentives, and the pay scale for potential new hires, who obviously have not yet joined public service much less the bargaining units in question. The Agency offer on pay and work rules, if adopted, would simply avoid further cost escalation of over \$600 million over five years – and \$3.7 billion over ten years – should NATCA's proposal take effect, a staggering and unsustainable burden in today's budgetary climate.

Unless this impasse is resolved, the existing contract – with its twice-annual pay hikes that are guaranteed to exceed civil service raises – will carry over indefinitely despite its expiration in September, 2005, due to the terms of an "evergreen" provision. This is not an academic problem: in January 2006, more than six months into protracted negotiations over this "expired" agreement, NATCA members received a sizeable pay increase worth \$79 million. Another increase, worth \$25 million more, will be triggered on June 11, 2006; the agency will implement this raise regardless of when the current agreement ends. But taxpayer generosity must end at some point. Every month this debate goes on is worth, on average an additional \$ 8.7 million to NATCA. . Because further delay is burdensome and unfair to the rest of FAA's workforce, the Agency intends to implement its proposals promptly, as provided under the statute, following Congress' 60-day review of the matter.

⁵ Sections 40122(a) and 106(l) of Title 49 set out the exclusive procedures for resolving bargaining impasses over proposed changes in the FAA's personnel management system, including compensation and benefits items. A few items remaining in dispute in this negotiation are not encompassed in the personnel management system, such as union official time.

⁶ Two other articles the Parties did not agree to are the subjects of appeals to the Federal Labor Relations Authority (FLRA) by the Union. The Agency's position is that has no duty to bargain over either proposal.

II. Statutory Background

A. **The FAA Administrator Retains Final Authority to Set Pay and Benefits for All Employees Following Good Faith Bargaining and Review by Congress**

In 1995, Congress initiated a series of reforms for the FAA designed to make it more responsive to the challenges of running the world's largest air traffic system. New laws directed the FAA Administrator to develop a new personnel management system and a new procurement system, both freed of many of the constraints that apply to other federal agencies. (Department of Transportation and Related Agencies Appropriations Act, Pub. L. No. 104-50, §347, codified as amended at 49 U.S.C. § 40122(g)). As to personnel reform, Congress' intent was that a new system would address the unique needs of the Agency, providing for greater flexibility in the hiring, training, compensation, and location of personnel and substantial cost savings, both of which were deemed essential to modernizing a 24 hour a day, 365 day a year safety-critical operation that is central to a critical industry.

Initially, the law exempted the Agency entirely from Chapter 71 of Title 5, the Federal Service Labor-Management Relations Statute. After Chapter 71 was restored, in 1996, Congress clarified the Administrator's responsibility to negotiate with labor organizations that represent FAA employees, by amending the Federal Aviation Act to give the Administrator clear, final authority to establish pay for all employees and to prohibit any type of bargaining over wages and benefits – except in one narrowly defined circumstance. 49 U.S.C. S 106(l)⁷ (the Air Traffic Management System Performance Improvement Act of 1996, Pub. L. No. 104-264.) That circumstance involved the procedure for implementing any proposed “changes to the personnel management system” that had been implemented earlier that year. See 49 U.S.C. § 40122(a).⁸ No

⁷ Section 106(l)(1) of Title 49 states:

Officers and employees.—Except as provide in subsections (a) and (g) of section 40122, the Administrator is authorized, in the performance of the functions of the Administrator, to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. In fixing compensation and benefits of officers and employees, the Administrator shall not engage in any type of bargaining, except to the extent provided for in section 40122(a), nor shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.

⁸ Section 40122(a) of Title 49 states:

(a) In general.--

(1) Consultation and negotiation.--In developing and making changes to the personnel management system initially implemented by the Administrator of the Federal Aviation Administration on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining

mention whatsoever was made of wage negotiations becoming part of regular collective bargaining. Instead, the parties were instructed to “use every reasonable effort to find cost savings and to increase productivity in each of the affected bargaining units.” Id.

The statute, as drafted, thus contained significant ambiguity as to whether the Administrator even had the authority to bargain over pay with FAA labor unions. The prior Administration, however, chose to interpret the law so as to confer such power, resulting in a series of collective bargaining agreements – including the current one with NATCA, first signed in 1998 – that quickly and vastly increased the Agency’s personnel costs.⁹ But regardless of whether such an interpretation was correct or wise, this much is clear: The only source of authority in federal law for the FAA to depart from standard pay-setting practices and negotiate over pay with NATCA or any other union is contained in Title 49, Sections 106(l) and 40122(a) read together, which go on to create a special mechanism for resolving impasses.

Specifically, the very same law that ostensibly authorized wage negotiations (again, a practice basically unheard of in the federal sector) also establishes the procedure for resolving impasses that the FAA is now following. Under this procedure, the Administrator must negotiate in good faith, adhering to all the same rules that apply under Chapter 71 to collective bargaining generally except in one respect. Namely, in an impasse, following mediation by the FMCS, the Administrator is permitted to implement her proposal, but only after Congress has had 60 days to consider it, together with the union’s objections. In sum, the grant of a highly unusual privilege to federal employees (pay and work rule negotiations) was counterbalanced by the Executive’s right to turn down unreasonable requests for higher compensation and benefits, and implement its own proposals, unless Congress decides to change the

representatives of employees of the Administration certified under section 7111 of title 5 and consult with other employees of the Administration.

(2) Mediation.--If the Administrator does not reach an agreement under paragraph (1) with the exclusive bargaining representatives, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement. If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Administrator’s proposed change to the personnel management system shall not take effect until 60 days have elapsed after the Administrator has transmitted the proposed change, along with the objections of the exclusive bargaining representatives to the change, and the reasons for such objections, to Congress. The 60-day period shall not include any period during which Congress has adjourned sine die.

(3) Cost savings and productivity goals.--The Administration and the exclusive bargaining representatives of the employees shall use every reasonable effort to find cost savings and to increase productivity within each of the affected bargaining units.

⁹ The General Accounting Office in 2005 found: “Air Traffic and Airway Facility PC&B real costs increased about \$1 billion between fiscal year 1998 and 2003, but they added only 12 net personnel.” *Air Traffic Operations: The Federal Aviation Administration Needs to Address Major Air Traffic Operating Cost Control Challenges*, GAO-05-724

outcome and, presumably, appropriate the necessary increase in funds. What the Union now characterizes as an “unfair” situation – a claim not made in the 1998 negotiations that occurred under the same legal framework – is precisely what Congress created when it gave labor a limited right to bargain over pay.

B. History of Litigation Over the FAA’s Unique Impasse Resolution Procedure

This is the second bargaining dispute the FAA has been required to submit to Congress pursuant to Sections 106(l) and 40122(a). In 2004, after being unable to reach agreement with NATCA leadership regarding compensation levels, and pay for performance, for ten other bargaining units (separate from the controller units at issue here), the FAA transmitted its proposals to Congress. Congress took no action during its 60-day review, and the FAA implemented its proposed changes in July, 2005.

NATCA repeatedly challenged the FAA’s action through numerous legal proceedings. Initially, in July 2003, NATCA filed a request for assistance with the Federal Services Impasses Panel (FSIP). The FSIP declined to assert jurisdiction, based on concerns raised by the FAA that Sections 106(l) and 40122(a) gave Congress and not the FSIP jurisdiction over disputes concerning changes in the personnel management system affecting compensation and benefits. On January 30, 2004, the day FAA transmitted its proposals to Congress, NATCA and another union filed a complaint against the FSIP in U.S. District Court for the District of Columbia, alleging that the FSIP had abdicated its mandatory statutory responsibility in refusing to assert jurisdiction over the Parties’ bargaining impasse. The district court rejected NATCA’s claim, and the U.S. Court of Appeals for the District of Columbia Circuit affirmed that decision in an Order dated February 17, 2006.

While its appeal was still pending before the D.C. Circuit, NATCA filed an unfair labor practice (ULP) charge with the FLRA on July 8, 2005, and subsequently amended the charge to include a request for a temporary restraining order (TRO). The ULP charge represented an abrupt change of course. NATCA now alleged that, in fact, there never really was an impasse reached with the FAA over the employee groups in question or that it had vanished due to “changed circumstances.” Instead, the new theory was that the Agency had refused to continue to bargain with NATCA over its proposed changes. NATCA waited to file this charge until receiving the FAA’s formal notice that it would implement its contract proposal covering the bargaining units in question. Perhaps not surprisingly, the FLRA did not grant NATCA’s request for emergency relief nor has it acted on the underlying charge, although preliminary discussions have taken place between the Agency and FLRA attorneys.

III. Background

A. Composition of the Bargaining Units Involved in the Present Negotiations

The present negotiations involve three separate bargaining units of air traffic controllers represented by NATCA.¹⁰ The current collective bargaining agreement, originally negotiated in 1998 and extended in 2003, addresses the work rules for all three bargaining units but only covers the compensation for two of the bargaining units.

Employees in these three bargaining units are collectively referred to herein as “controllers” because the ATCS bargaining unit comprises approximately 96% of the employees covered by this submission. The individual bargaining units are referred to by name (ATCS, TMC/S, or NOTAM Specialists) when necessary for discussion purposes. When discussing the AT Pay Plan, “controllers” refers to the ATCS bargaining unit, unless otherwise specified.

B. History of Negotiations

In April 2005, the FAA and NATCA began bargaining over ground rules that would apply to the substantive contract negotiations. The Parties entered into an agreement setting the ground rules on May 12, 2005. Substantive negotiations began in July 2005 and the Parties negotiated for a total of seventeen weeks in seven cities over the following dates:

- July 18 to July 22, 2005
- August 8 to August 19, 2005
- August 29 to September 2, 2005
- September 19 to September 30, 2005

¹⁰ **Air Traffic Control Specialists (ATCS):** Approximately 14,500 Air Traffic Control Specialists (AT-2152 series), including full performance level and developmental employees, whose primary duty is the separation and control of air traffic located at terminal and en route facilities nationwide and in Puerto Rico and Guam. Members of this bargaining unit are covered by a pay plan known as the Air Traffic (AT) Pay Plan, which is part of the current collective bargaining agreement.

Traffic Management Coordinators/Specialists (TMC/S): Approximately 600 Traffic Management Coordinators and Traffic Management Specialists (AT-2152 series) located in terminal and en route facilities nationwide and the Air Traffic Control System Command Center in Herndon, VA. Members of this bargaining unit are covered by the AT Pay Plan.

Notice to Airmen (NOTAM) Specialists: Approximately eight (8) NOTAM Specialists (FV-2152 series) located in the U.S. NOTAM Office at the Air Traffic Control System Command Center in Herndon, VA. Members of this bargaining unit are not covered by the AT Pay Plan but are included in the Multi-unit Compensation Pay Plan along with nine other collective bargaining units represented by NATCA.

- October 3 to October 7, 2005
- October 17 to October 28, 2005
- November 14 to November 18, 2005
- November 28 to December 9, 2005
- January 9 to January 13, 2006
- January 23 to February 3, 2006
- February 13 to February 24, 2006

These extensive negotiating sessions, while substantive and productive as far as they went, did not result in complete agreement on a number of issues relating to the personnel management system, including critical issues of compensation and benefits. As required by 49 U.S.C § 40122(a), the Parties then utilized the services of the FMCS in an effort to reach agreement on the unresolved issues. The Parties were in mediation with an FMCS mediator from March 6 to March 31, 2006, but did not reach agreement on all issues. The FMCS mediator released the Parties on March 31, 2006, and the FAA determined that it was at a final impasse with NATCA on April 5, 2006, after exchanging its last and best offer with the Union.

The current collective bargaining agreement contains 106 individual articles in addition to the AT Pay Plan. During negotiations, the Union proposed another forty-four new contract articles and the Agency proposed one new article (the incorporation of the controllers' pay plan into the contract itself). The Parties tentatively agreed upon 101 contract articles. A list of the issues tentatively agreed upon is provided in Appendix B. Many significant issues were resolved. Of the sixteen articles not agreed to, fourteen address proposed changes to the Personnel Management System, including compensation and benefits, and are included in this submission; one involves a prohibited subject of bargaining, i.e. a non-negotiable proposal; and one involves a permissive subject of bargaining over which the FAA has no duty to bargain.

In sum, the Parties devoted great time and effort to negotiations and made much progress on important work rule issues.¹¹ On the key economic issues, however, the Parties' competing offers are not close: a \$600 million gap separates the offers over five years, and that number increases to \$ 3.7 billion over ten years principally because NATCA's proposal would perpetuate the current pay system of excessively generous pay bands and automatic, above-normal pay growth after the initial term ends. In the end, as much as the FAA would have preferred to have reached a comprehensive agreement, the Parties have been unable to do so.

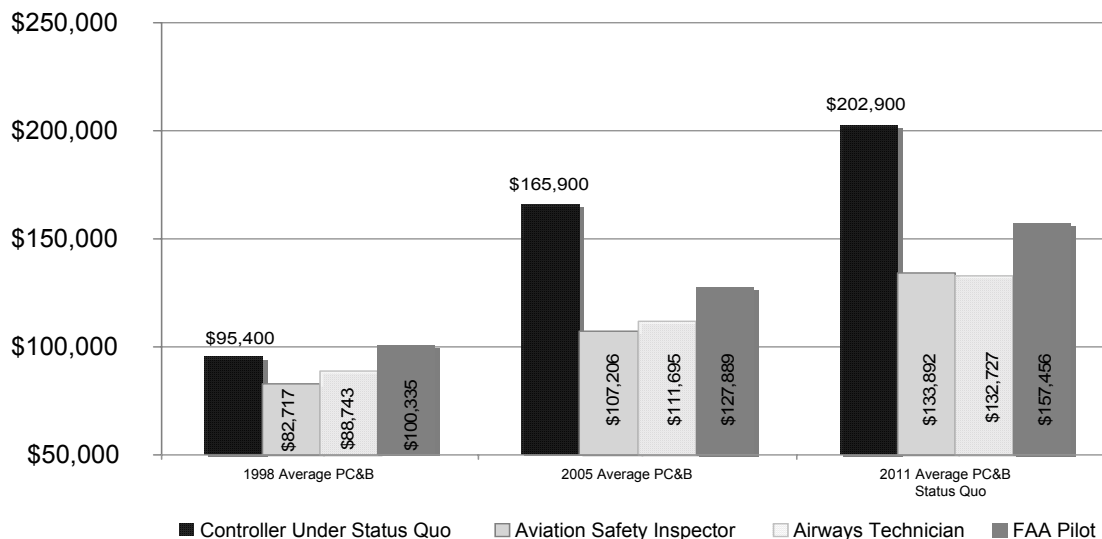
¹¹ The FAA spends approximately \$112,000 in labor and non-labor (primarily travel and per diem) costs for each week of negotiations and mediation. The negotiations and mediation have thus cost the taxpayer more than \$2.3 million.

IV. Negotiations Environment

A. FAA's Fiscal Situation

The FAA's mission is extremely challenging: We must operate the largest air traffic control system in the world in a safe and efficient manner, maintaining an existing ground-based infrastructure that would cost over \$30 billion to replace while planning for a future based on satellite technology, a transition that will require substantial new funding. The Agency certifies and inspects aircraft. It continually develops and promotes new innovations in aviation safety. It supports and oversees new runways. But in order to continue the excellent safety record and fulfill its responsibilities within the daunting budgetary constraints it now faces, the Agency simply must exercise caution on further increases in pay and benefits in negotiations with all of its labor unions, particularly including NATCA, whose members are extraordinarily well paid already by any standards.

Average PC&B Per FAA Labor Group



The FAA is currently attempting to balance its mission-critical safety activities in an extremely challenging budget environment. Federal non-defense, non-homeland security discretionary spending continues to decline. Congress has imposed ever-increasing across-the-board rescissions over the past six years, resulting in a \$144 million cut to the FAA this year. Compounding the effects of these rescissions are five consecutive years of higher-than-budgeted-for pay raises. The FY 2006 unfunded pay raise has created a more than \$30 million impact to the payroll-intensive Operations

appropriation, which has already absorbed unfunded pay raises of more than \$300 million since FY 2002.

While the FAA's budget has remained essentially flat at approximately \$14 billion since FY 2004, the distribution of the budget among the various budget accounts has changed considerably.¹² Due to the FAA's increased operating costs, Congress has had to appropriate more funds to the Operations account, resulting in less being appropriated to the capital account (Facilities and Equipment) and the Airport Improvement Program. Approximately 74% of the FAA's Operations account is attributable to payroll costs and 42% of that amount is ascribed to payroll costs for controllers, who constitute 31% of FAA employees. In 1998, prior to the current agreement and compensation system, 26% of payroll costs were attributable to controllers. The result is that more and more money is being spent each year on Operations, and less on upgrading the infrastructure of the National Airspace System (NAS). The Agency's recent emphasis has been, out of necessity, on sustaining the current infrastructure rather than on developing the next generation air traffic control system.

The FAA is meeting these financial challenges by fundamentally changing the way it does business. The Agency has implemented improved management tools, true cost-accounting systems, and a pay-for-performance compensation structure, all to make better use of our resources. In 2005, the FAA launched an agency-wide cost control program, which should provide savings for years to come. The provision of flight services was, after a fair and full competition, competitively sourced to an outside vendor in a contract that will save \$1.7 billion going forward. Several internal realignments are underway, including consolidation of accounting and personnel functions, as well as the creation of new Air Traffic Organization (ATO) regional service areas. The simple fact of the matter is that in order to succeed, the FAA has to run more like a business – in all respects. A significant step towards that end is reforming how the Agency compensates controllers, its largest single group of employees.

B. FAA's Bargaining Objectives: Reforming the Current Agreement

The FAA's workforce is comprised of approximately 45,000 employees dispersed geographically throughout the nation. Reflecting the varied responsibilities of the Agency, FAA employees include test pilots, safety inspectors, physicians, engineers, certified technicians, computer programmers, and of course air traffic controllers, as well as other professionals. Of this total, some 77% are bargaining unit employees in approximately 45 separate bargaining units represented by nine different unions.¹³

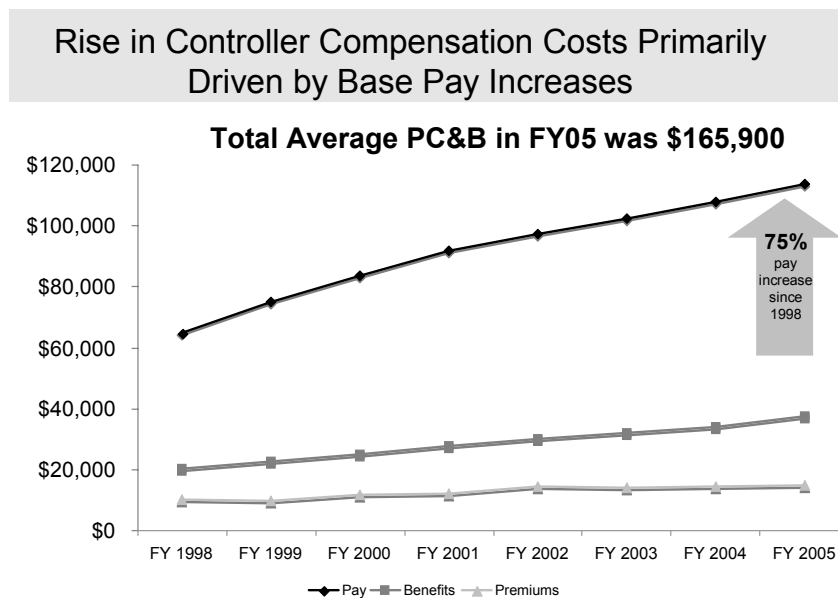
¹² The FAA's budget was \$13.9 billion for both FY 2004 and FY 2005. The enacted budget for FY 2006 is \$14.3 billion.

¹³ The number of bargaining units in the FAA proliferated after the Agency began negotiating over pay.

Unlike the fixed pay schedules, step increases, and locality pay associated with the general schedule (GS) pay system, the FAA system was designed to permit variable pay bands linked to market-based rates to accommodate the composition of the workforce. A central feature of the “pay for performance” concept, reflecting that not every profession moves in lockstep, is that once an employee reached the top of his or her pay band, further increases would be paid out as cash awards and not added to base salary. But largely as a result of agreements with unions that heavily resisted performance-based compensation, several of these pay schedules lack effective caps and thus the bands now far exceed comparable market or GS pay levels.

The current NATCA contract is the prime example of a salary structure run amok. It represents the converse of a true performance-based pay system. While nominally containing AT “pay bands” with theoretical maximums and minimums, the bands have no meaning: every year under the current contract, the “maximum” and “minimum” levels of the bands simply go up by whatever percentage that salaries are raised. At the same time, generous pay rules guarantee NATCA members an automatic annual pay raise equal to the greater of the agency-wide annual increase or the government-wide increase plus 0.8 %, perversely rewarding controllers more than the rest of civil service, even if the FAA fails to meet its established performance goals.

Every year every controller is eligible to receive a higher than average increase regardless of whether that controller was at the “top” or “bottom” of the band and regardless of performance. Moreover, NATCA and the Agency engineered hidden pay inflation in the existing agreement under the guise of “pay administration” procedures. For example, the annual increase to controllers is split into a series of smaller, separate increases, one applied after another in order to maximize their overall compounding effect. Like a credit card balance recalculated on a daily basis to generate high interest rates, the NATCA pay structure has enjoyed an effective “APR” of 10.71 % since 1998.



The net result: controller compensation now makes a mockery of market based pay¹⁴ and is far more expensive for taxpayers than was the GS system replaced under the "personnel reform" mandated by Congress. After a 75% increase in pay since 1998, the *average* controller now enjoys yearly total compensation of \$165,900, consisting of \$128,500 in cash earnings and \$37,400 in benefits. Moreover, the combination of constantly escalating "maximums", premium pay, and Union-controlled watch schedules has produced some truly absurd results. For example, the top 100 highest compensated controllers earned an average of **\$197,000** in cash compensation in FY 2005, exceeding the earnings of every Member of Congress and Cabinet Secretary, and just

¹⁴ NATCA's President has not concealed his disdain for performance-based compensation. He recounted his team's reaction to an FAA proposal in 2003 to introduce performance metrics into the individual merit award (SCI), as follows:

The agency finally came to the contract extension table with their new, improved SCI proposal, which I may release, and which is easily the most putrid, fetid pile of garbage I have ever read in my almost thirty years of government service. Their proposal wasn't pay-for-performance. It was pay-for-CONDUCT. It was the suck-up system. They wanted to rate you on a couple very important measures.....like, "comes back from breaks early," or "anticipates customer requests," or "uses less than 75% of earned sick leave." Just reading that one made me sick so I banged in [sick] the rest of that day, too. They had a whole pack of these maggot-ridden ideas.

Heroically, our team didn't flinch. As a matter of fact, our first proposal to THEM was, "Keep your damn money. We don't want it. It's less than we spend on cable or porn. Tell the Administrator we don't want it. And we'll go forward from here without pay for performance."

I never laughed so hard in my life as I did when they said, "We CAN'T keep our money. We've GOT to have pay for performance." Because I think that's when I remembered what Phil Barbarello told me, lo, those six years ago: "We own them."

. . . [T]o think that we protected pay and benefits for another two years is a tremendous victory for our union. And the fact that the vaunted "pay for performance" plan---the linchpin of the new Administrator---the pride of the Department--- is limited to a measly 0.8% of additional pay is such thievery we should all pick up our pay checks with a mask and a gun. And a big, shit-eating grin.

"Weekly Update," John Carr (Dec. 31, 2003).

\$10,000 less than the salary earned by the Vice President of the United States.¹⁵ Moreover, the existing pay rates create a strong disincentive for controllers to seek or accept promotions into supervisory or management-level positions.

The outcome of the current pay structure was not predicted when the contract was signed. Instead, the Congress and the public were told in 1998 that the new contract would cost \$200 million in salary increases over its first three years – to be offset by “efficiency gains.” The actual cost, in retrospect, was 500% greater than predicted, more than \$1.1 billion during that period.¹⁶ Plainly, now that the Agency has the tools to accurately forecast its costs, neither the FAA nor the taxpayer can afford a repeat performance.

The dramatic increase in controller labor costs since 1998 was accompanied by a huge rise in controller personnel costs and benefits (PC&B) costs per flight, a trend that should be of great concern to system users.¹⁷ In 1998, controller PC&B costs per flight were \$82.98. By 2005 that figure had risen to \$131.22 per flight – a 58% increase. (Over the same period of time, the number of flights being handled by controllers rose by only eight (8) percent.) As the graph below shows, the taxpayer is obviously receiving far less “bang for its buck” in 2005 than it did in 1998.

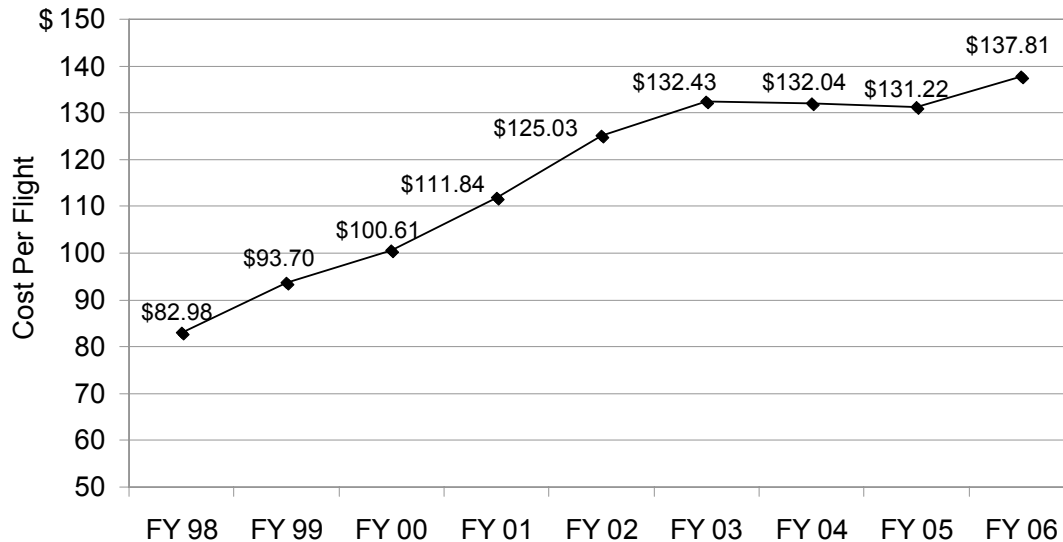
¹⁵

Average Earnings of Various Federal Employees Excluding Benefits (FY 2005)	
Vice President of the United States	\$208,700
Associate Justice of the U.S. Supreme Court	\$199,200
Top 100 FAA Air Traffic Controllers	\$197,000
Cabinet Secretary	\$180,100
U.S. Congressman	\$162,100
U.S. District Court Judge	\$162,100
FAA Administrator	\$162,100
Air Force One Pilot-in-Command	\$137,400
Top 100 FAA Aviation Safety Inspectors	\$133,300

¹⁶ Even assuming that the original projection was supposed to represent the amount of compensation controllers would receive after regular civil service increases, the figures provided were well off the mark; the incremental cost to the FAA when compared to presumptive civil service pay growth was \$510 million.

¹⁷ Personnel costs and benefits (PC&B) include base salary, locality pay, pay premiums, and employer paid benefit costs.

Escalating Controller Labor Costs Per Flight



The FAA also relinquished key management rights in the 1998 agreement with NATCA by negotiating over many permissive subjects of bargaining – i.e., matters over which the Agency typically has unfettered discretion. The agreement and numerous side agreements, many negotiated at the facility level, set controller staffing minimums and then tied the Agency’s hands with respect to the basic watch schedule and work assignments. The Agency agreed to bargain over the deployment of new technologies in the National Airspace System, a decision that slowed down the introduction of needed improvements with systems like STARS,¹⁸ a joint effort by the FAA and the Department of Defense that is important to homeland security. Incredibly, at many facilities, NATCA representatives, not FAA managers, set the work schedule. With schedules optimized for controller pay, rather than efficiency, the Agency has borne the cost of excessive overtime and costly pay premiums.¹⁹

The Agency’s bargaining objectives in these negotiations were to obtain true reform in three ways: first, given the current fiscal environment, to contain salary growth; second, to achieve work rules giving much greater managerial flexibility over operations, which would allow the Agency to become more productive; and third, to obtain greater consistency across the Agency in personnel practices. This last objective is particularly

¹⁸ The Standard Terminal Automation Replacement Systems was designed to replace automated radar terminal systems and other capacity-constrained, older technology systems.

¹⁹ In the last several months, the Agency has seen the benefit of regaining control over the daily watch schedule. After implementing a new schedule at the New York TRACON – a decision which NATCA strongly protested and claimed broke the existing collective bargaining agreement – overtime costs fell by 75% from \$4 million a year to less than \$1 million.

urgent given that the FAA is in the midst of negotiations with several other FAA bargaining units. Because the NATCA-represented controllers represent the largest single group of FAA employees, the outcome of these talks will set the tone, and the bar, for the others that follow.

Over the course of the last nine months of negotiations and mediation, the FAA and NATCA negotiating teams have worked diligently to achieve agreement on the vast majority of the issues in dispute. That a substantial gap still exists over pay should by no means detract from the hard work, and honest concessions, by both sides. While neither party to a labor negotiation could reasonably expect to achieve all of its goals in a contract with over a hundred articles, these agreements go a long way towards helping the Agency meet its objectives. Indeed, most of the difficult work rules have been amicably resolved, though a few remain. Unfortunately, fundamental differences over pay principles and pay equity – going to the heart of the Agency’s ability to transform itself into a performance-based institution – hang in the balance.

V. Issues in Dispute: Changes to Compensation and Benefits

Consistent themes run through the Parties’ disputes, especially those relating to compensation and benefits. The Agency’s proposals will slow the growth of future pay increases, result in greater internal pay equity among FAA employees, and help establish a true performance-based compensation system. The Union’s proposals perpetuate an unsatisfactory *status quo* that pretends the challenges facing the FAA are not real. The Agency, for its part, cannot continue operating under a system that guarantees automatic pay increases above the government-wide level regardless of Agency performance, pays trainees and new hires much more than their skills would justify, and never rewards individual excellence. Fundamental change is necessary in the way the FAA compensates its largest single bargaining unit and the Agency’s proposals reflect that change.

A. Agency Proposal to Establish New Air Traffic Specialized Pay Plan (ATSP)

1. Overview

The FAA has proposed for controllers a new system of pay bands that is consistent with the compensation system applicable to most other FAA employees and the GS pay levels that controllers were under prior to the 1998 agreement. The existing pay schedules can no longer be supported after years of automatic above-normal upward adjustments, creating inequities between controllers and other FAA employees and working against “pay for performance.” In transitioning to the new pay system for controllers, known as the Air Traffic Specialized Pay Plan (ATSP), the Agency is committed to keeping the current workforce whole with respect to their existing compensation levels. Significantly, however, the actual salaries of current controllers would not be reduced as a result of implementation of the new pay bands. Plus, current controllers would also be eligible in every year of the contract for a cash award or base pay increase under the Agency’s two performance-based plans. The Union, in contrast,

wants to preserve the existing pay rules for controllers while nominally reducing the band “minimum” by just over two percent (2.2) and “maximum” by less than 10 percent.

The Agency has also proposed to change the way pay bands for controllers are adjusted because the current method for doing so has led to uncontrolled growth in the bands and is not consistent with a true performance-based compensation system. Currently, the bands are adjusted upward automatically each year by the full amount of the Organizational Success Increase (OSI), gutting the idea of a true maximum or salary limit.²⁰ Under its proposal, the Agency will apply the same methodology it uses to adjust the Core Compensation Plan pay bands, which entails first surveying the appropriate labor markets and then comparing the FAA’s salary structure with the survey results, the ATSPS pay bands.

The Agency projects that by comparison to the current contract, it can avoid another \$1.86 billion in cost escalation over the next five years simply by hiring new controllers into the ATSPS and by aligning the pay rules for the existing workforce with those applicable to the rest of the FAA.²¹ Still, the compensation for new controllers would be more than fair under the FAA’s proposal. A controller who is newly hired in FY 2007 would enjoy an estimated base salary of \$84,200 after five years on the job, plus \$43,400 in premium pay, and benefits, for a total compensation package of \$127,600. The Agency believes that these compensation levels would be more than adequate to recruit and retain new controllers.

2. Summary of the Status Quo

The existing pay plan links salaries to air traffic facility levels. Facilities consist of air traffic control towers, en route centers, and terminal radar approach control (TRACON) locations, ranging from levels 4 to 12.²² While the pay bands under the existing AT Pay

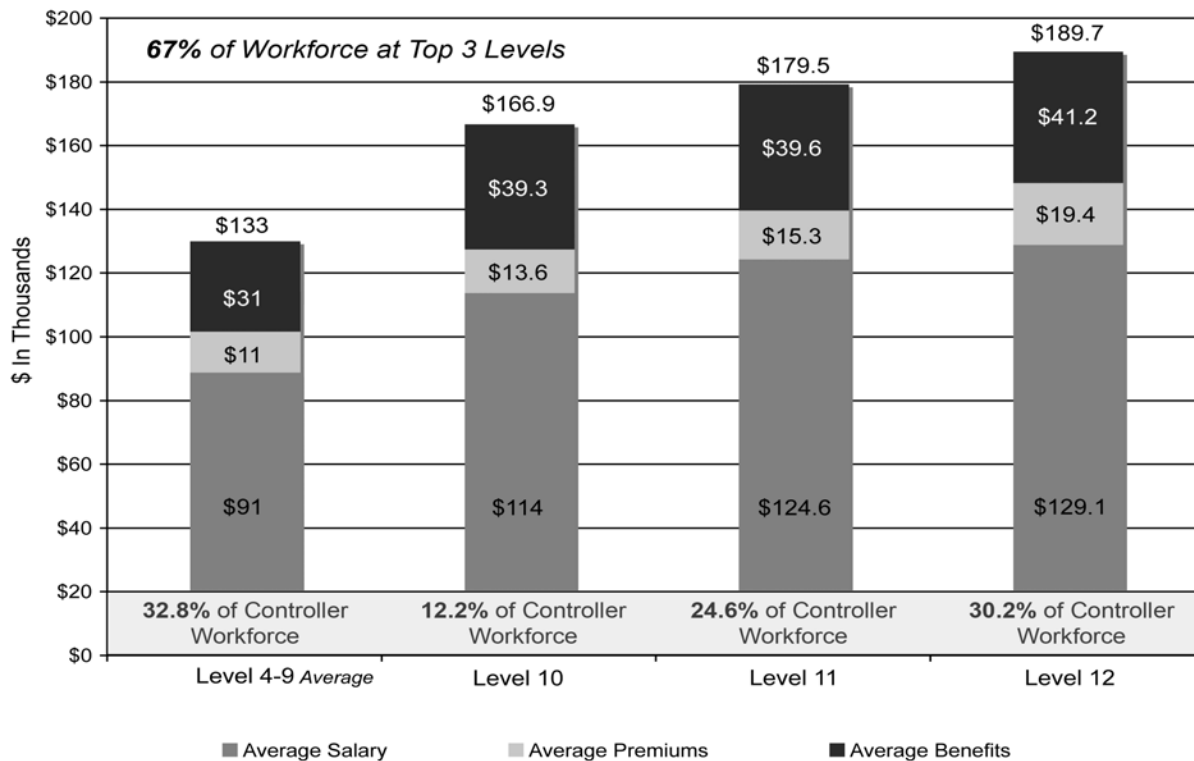
²⁰ The OSI is an annual pay increase that is supposed to reflect the FAA’s success in achieving its performance goals but, under the current AT Pay Plan, is actually guaranteed every year regardless of the organization’s success. A detailed discussion of the OSI is provided in Section V.B, Annual Increases, below.

²¹ While the Agency is trying to slow its payroll cost escalation, the six largest domestic air carriers actually reduced total salaries and fringe benefits by \$8.336 billion from 2001 to 2005, as calculated by the Air Transport Association.

²³ The various salary levels in the current AT Pay Plan correlate with the volume and complexity of air traffic controlled in the facility where a controller is assigned. Higher level facilities, e.g. 11 and 12, control more traffic in terms of volume and complexity, than lower level facilities, e.g. 7 and 8. Controller compensation is based upon facility level, with controllers at higher level facilities receiving greater compensation than those at lower levels. Examples of facilities at varying levels include Dallas/Fort Worth Air Traffic Control Tower (ATCT): level 12; Kansas City (ATCT): level 9; Manassas, VA ATCT: level 5; Southern California TRACON: level 12; and Boston Air Route Traffic Control Center (ARTCC): level 11. The FAA has not proposed changing the criteria that used to determine a facility’s level, just the compensation associated with each level. A more thorough discussion of facility levels is provided in Section V.E.

Plan theoretically cover a wide range of salary levels,²³ in fact over half the controllers (55%) are concentrated in pay bands 11 and 12, and most (68%) are in the top three bands. Pay bands 10, 11 and 12 have maximum salaries of, \$130,288, \$137,126 and \$143,984, respectively. These are *base* salaries only. Controllers earn, on average, an additional \$34,200 in premiums, differentials, and locality pay. That is how average total cash compensation for all controllers – a workforce of 14,500 employees – came to \$128,600 in FY 2005.

**Average Controller Annual Compensation
by Air Traffic Control Facility Level - FY 2005**



3. The Agency's Proposal

The Agency has proposed new pay bands for controllers that are based on the Agency's Core Compensation Plan pay bands. Specifically, salaries associated with the G, H, I, and J bands under the Core Plan would be correlated with pay bands for levels 4 through 12 under the new ATSP. ²⁵ The Union has proposed maintaining the

²⁵ The Agency's proposed new pay bands are an attachment to Article 108, Pay Rules, located in Appendix A.

existing pay bands close to today's levels, but with a 9.2 % reduction in the nominal maximum for each pay band and a 2.2 percent reduction in the nominal minimum. The Agency's proposed pay bands, and the current pay bands that the Union wants to retain, are set forth in the following table.²⁷ The salary figures listed in this table reflect base pay only. As noted above, controllers' actual pay is enhanced by locality pay, premiums, and differentials, which added another 28% to base pay in FY 2005.

²⁷ The criteria used to determine a facility's classification level are contained in the "Position Classification Standard for Air Traffic Control, Series ATC-2152, Terminal and En Route." The FAA has not proposed changing the criteria that used to determine a facility's level, just the compensation associated with each level. The Agency is not required to bargain over the criteria, but may have an obligation to bargain over the impact of changing them, which is acknowledged in the Agency's proposal (Article 108, Section 2). The Union proposed that the Position Classification Standard governs facility classification levels, implying that the Agency cannot change the Standard during the life of the agreement.

Pay Bands (Before Locality Pay Increases)				
	FAA Proposal (Note: Current controllers "grandfathered" at existing base pay if above pay band maximum)		NATCA Proposal (All Controllers)	
ATC Level²⁸	Minimum	Maximum	Minimum	Maximum
3	N/A	N/A	\$43,804	\$56,945
4	\$37,200	\$50,050	\$46,758	\$60,786
5	\$37,200	\$50,050	\$53,071	\$68,992
6	\$44,750	\$57,600	\$58,644	\$76,237
7	\$45,300	\$62,650	\$64,803	\$84,244
8	\$52,850	\$70,200	\$71,607	\$93,089
9	\$55,200	\$78,050	\$79,125	\$102,863
10	\$62,750	\$85,600	\$90,993	\$118,291
11	\$67,400	\$96,950	\$95,769	\$124,499
12	\$74,950	\$104,500	\$100,559	\$130,726

Again, under the Agency proposal, current controllers would not have their salaries reduced. Any controller whose salary exceeds the maximum under the new pay bands would be "grandfathered" at his or her current salary. Thus, the new pay bands would, for all practical purposes, affect the salaries only of those controllers who are hired after the new pay system takes effect. The Agency projects that it would avoid a total of \$811 million in additional expense over the next five years by applying the ATSP pay band system to the current workforce of controllers and \$905 million by applying the system to new hires.

The ATSP pay bands have been designed to help the Agency recruit controllers into supervisory and management-level positions. This is a crucial task: the Agency must be able to recruit supervisors and managers internally, so that institutional knowledge and experience is retained, particularly as we transition to a satellite-based system with new technologies. Today, many controllers earn more in cash than their supervisors and managers do. The ATSP pay bands, unlike the current pay bands, would remove this financial disincentive for controllers to seek and accept management-level positions.

Whenever that the new pay bands need to be adjusted in the future in order to recruit and retain qualified controllers, the Agency would adjust the maximum and minimum

²⁸ Facility levels are referred to by their air traffic control (ATC) level. A facility classified at level 11 is referred to as an ATC-11 facility.

pay band levels using the same methodology as the Core Compensation Plan.²⁹ Under the Core Plan, the Agency conducts a survey of appropriate labor markets for comparison with the FAA's salary structure. The pay bands are then adjusted by the Administrator based upon the results of the survey and comparison.

4. The Union's Proposals and the Agency's Response

The Union's final offer was to keep the current pay system almost entirely intact, including the pay bands, pay rules, pay administration procedures, and other features that have augmented compensation by 75% since 1998. NATCA would reduce band "minimums" by just 2.2 percent – even though further reductions here would save taxpayers great expense by changing new hire salaries, not compensation for the current workforce – while offering to reduce the band "maximums" by less than 10%. The Union nevertheless has characterized this offer as a big "pay cut."³¹ The Union proposed that otherwise the pay bands remain unchanged for the first three years and then raised thereafter using the existing pay rules, which would mean salary "minimums" and "maximums" would increase in lockstep each year with the agency-wide increase.³² The Union's proposal would continue to provide for automatic, annual pay raises at the greater of agency-wide (OSI) or government-wide increase plus 0.8%. The individual "merit" increase (SCI) would continue to be awarded without regard to individual merit; every controller would get the same percentage increase.

During negotiations, the Union advanced several arguments against the Agency's proposal for new pay bands and in support of its own. We address each of these in turn.

First, NATCA contends that the Agency's proposed pay scales are so low they will damage the "dignity" of the air traffic control profession and thereby endanger the safety of the flying public. Their theory, evidently, is that "underpaid" controllers would not perform their jobs as carefully as the current workforce. We dispute the factual premise for this statement, as well as the conclusion. We do not agree that the pay scale is in any way inadequate for new controllers. It is estimated that a controller who is newly hired in FY 2007 would have a base salary of \$84,200 after five years on the job and a

²⁹ The text of the Agency's proposal regarding pay band adjustments is in Section 7 of Article 108, Pay Rules, located in Appendix A.

³¹ The Union's proposed new pay bands are an attachment to Article 108, Pay Rules, located in Appendix A. The Union's methodology for how it's proposed bands were calculated is in the Principal Memorandum of Agreement (also located in Appendix A), along with it's proposal that the bands remain unchanged for the first three years.

³² The text of the Union's proposal regarding pay band adjustments is in Section 7 of Article 108, Pay Rules, located in Appendix A.

total compensation package (including benefits) of \$127,600. These new controllers would still be among the best paid employees in the federal government. The real question is whether the Agency will be successful in recruiting for, and retaining, new hires. The Agency believes that these new salary levels would be more than adequate for these purposes.

Second, the Union contends that the FAA's proposed new pay bands actually compare unfavorably to the GS pay scale, when adjusted for post-1998 increases, and thus are regressive in nature. While it is no doubt true that new hires will be paid less handsomely than existing controllers under the Agency's proposal, in fact we believe that the proposed scales are quite close to the adjusted GS scales. As can be seen in the next table, an ATC-11 level controller (e.g., at Dulles ATCT) will be placed under a minimum/maximum pay band that compares favorably to the pre-contract pay scale when adjusted for post-1998 GS increases. An ATC-11 level controller would earn between \$67,400 and \$96,950, as compared to a GS-13 (\$65,832 to \$85,578) or GS-14 (\$77,793 to \$101,130) employee under the pre-1998 compensation system.

Base Pay (Before Locality Pay Increases)						
FAA Proposal				General Schedule (GS) (January 2006)		
ATC Level	Controllers	Minimum	Maximum	Grade	Step 1	Step 10
4	0.05%	\$37,200	\$50,050	10	\$42,040	\$54,649
5	1.44%	\$37,200	\$50,050	11	\$46,189	\$60,049
6	4.27%	\$44,750	\$57,600	12	\$55,360	\$71,965
7	10.19%	\$45,300	\$62,650	13	\$65,832	\$85,578
8	7.78%	\$52,850	\$70,200	14	\$77,793	\$101,130
9	7.74%	\$55,200	\$78,050			
10	12.26%	\$62,750	\$85,600			
11	25.10%	\$67,400	\$96,950			
12	31.16%	\$74,950	\$104,500			

Third, NATCA argues that the Agency's financial projections applying the current pay rules are mistaken and that, given upcoming controller retirements, the current pay scale is surprisingly affordable. According to the Union, as each new hire enters the workforce at a low salary, he or she replaces a controller leaving at the top of the scale.

While the Union's claim is literally true (i.e., a new hire is less expensive on the first day of employment than a controller who is about to retire), this argument is highly misleading. In fact, each year the contract continues, our situation worsens. That's because the contract ties compensation levels primarily to facility location – not seniority or experience levels – and provides for automatic pay hikes and increases in pay “maximums” every year, at rates far above the civil service norm. As a result, under the current pay system, new hires very rapidly move to six-figure salaries once they are certified. Thus, the savings from replacement hiring are limited and the cost of the contract continues to escalate with increased pay every year for all controllers. Under either the Agency or NATCA proposals, even with expected retirements, the FAA's annual payroll cost would be **substantially** higher than today within five years.

The unfortunate reality confronting both the Agency and NATCA is that the existing controller pay scales are clearly not sustainable in the current budget environment. While controllers represent only 31% of the workforce, the Agency spent 42% of its \$5.7 billion operations budget for labor costs on controller compensation in FY 2005. Every dollar that is spent on controller compensation is a dollar that could be invested in technology improvements for the nation's air traffic control system.

B. Annual Pay Increases

1. Overview

The Agency has proposed to change the method for awarding the two existing pay increases for controllers, with the objective of making them true performance-based raises as they are for the FAA's other employees. The Union wishes to maintain the current system. The first of the existing pay increases is calculated based on the Agency's performance with respect to certain predetermined organizational goals. Controllers, unlike other FAA employees, today are *guaranteed* an increase that *exceeds* the general increase for federal government employees *even if the Agency does not meet its performance goals*. The Agency has proposed to eliminate this guarantee. The second pay increase was intended to be based on merit. Again, for controllers it is not; every NATCA member gets an identical percentage increase. The Agency has fixing this so that controllers do, in fact, receive a pay increase based on their own individual performance. Finally, under our proposal controllers whose base pay exceeds the maximum under the Agency's proposed pay bands are eligible to receive this increase in a lump sum payment each year.

2. Summary of the Status Quo

Controllers, like most FAA employees, are no longer under the General Schedule (GS) compensation system that applies to the rest of the federal government. Under the GS system, employees receive pay raises in two ways. First, their pay increases by seniority as they progress through the steps of their grade. For example, an employee who has been a GS-12, Step 3 for a certain period of time automatically becomes a GS-12, Step 4 and receives a pay raise accordingly. Second, all GS system employees

receive a government-wide general increase that is recommended by Congress and approved by the President each year. Neither of these pay increases is meaningfully tied to performance, either the individual employee's performance or the Agency's performance as a whole.

a. The FAA's Core Compensation Plan – Non-Controllers

As part of personnel reform, the FAA implemented a new pay plan called the Core Compensation Plan. Under the Core Compensation Plan, the FAA replaced the two GS system pay increases with two new ones. The first, called the Organizational Success Increase (OSI), makes up the bulk of the annual increase. For most FAA employees, but not controllers, the amount of the increase is determined by the Administrator based upon the Agency's success in meeting a series of published organizational goals relating to such safety and efficiency metrics as passenger delays, runway incursions, operational errors, general aviation fatal accidents, and the commercial air carrier safety record. The more goals that are met, the greater the increase employees receive – up to a maximum of the government-wide general increase plus 1%. Conversely, if the Agency does not meet any of its goals, the Administrator could award no increase for a particular year.³³

The second pay increase under the Core Compensation Plan is called the Superior Contribution Increase (SCI). For employees other than controllers, the amount of the increase depends on an employee's individual performance, which is evaluated based on three commonsense factors: 1) collaboration, 2) customer service, and 3) impact on organizational success. Based on individual evaluations using these three factors, the SCI is distributed based on merit according to the following formula: 20% of employees receive an increase of 1.8%, 45% of employees receive an increase of 0.6%, and 35% of employees receive no increase.

Certain employees are not eligible to receive the two annual increases under the Core Compensation Plan. Employees who have been with the FAA for less than 90 days are ineligible, as are employees who are working under a performance improvement plan, known as an Opportunity to Demonstrate Performance (ODP) plan, at the end of the performance year.³⁴ Also ineligible are employees who have been suspended or demoted during the performance year. The OSI and SCI pay increases are awarded to eligible employees in January of each year.

b. The Controllers' AT Pay Plan

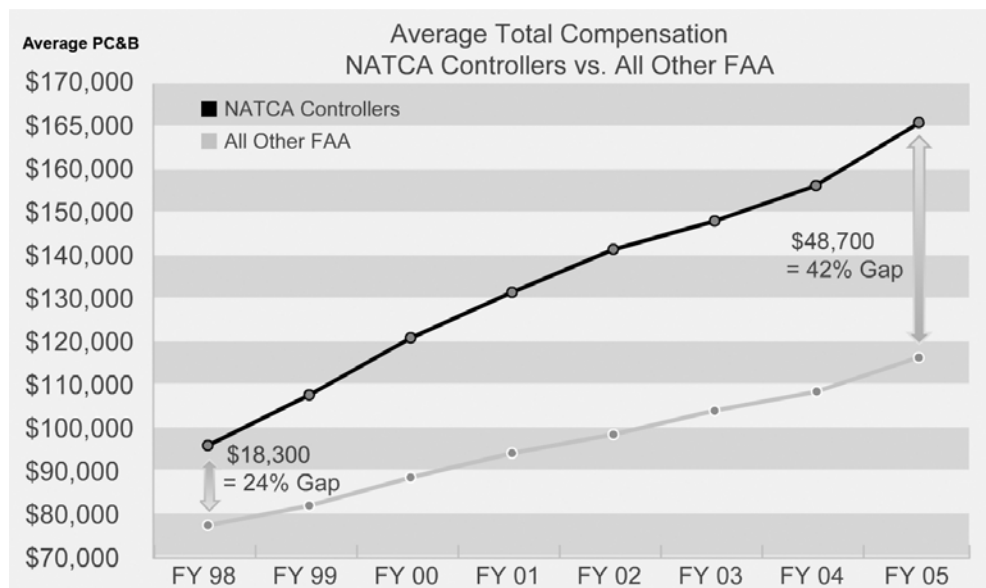
³³ Section 106(l)(1) of Title 49 states, in part: “[N]or shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.”

³⁴ A controller is given an ODP when his job performance falls below an acceptable level. The ODP is a fixed time period in which the controller is given performance goals and is subjected to closer monitoring.

The OSI and SCI annual pay increases are also part of the controllers' pay plan. But, the method for calculating these increases is vastly different under the AT Pay Plan. The controller contract, as currently structured, is really a system of guarantees – not performance incentives.

Although the OSI pay increase was intended to be based on the Agency's success in meeting established objectives, NATCA members today are *guaranteed* to receive a substantial pay increase even if the Agency does not meet its goals. Controllers receive the *greater of* the OSI that is paid to other FAA employees, or the government-wide general increase plus an additional 0.8%. Thus, controllers are *guaranteed* to receive a bigger increase, on a percentage basis, than other federal government employees – and a much greater increase in terms of actual dollars because of the high salaries earned by controllers. For instance, in 2004, the OSI pay increase for non-controllers was 3.15%. The general increase for federal government employees was 2.7%. Controllers received an OSI pay increase of 3.5% based on the guarantee of 0.8% on top of the 2.7% general increase for federal government employees – in effect increasing each controller's salary adjustment by 11%. (If, however, the OSI for other FAA employees had been higher than 3.5% in 2004, the controllers would have received that higher increase instead.) Despite lip service to performance pay, NATCA has ensured its members get the best of both worlds under the current system.

Total Compensation Gap Between Controllers and All Other FAA Employees More Than Double from 1998-2005



Under the controllers' AT Pay Plan, the pay increase that was supposed to reward and encourage individual excellence (the SCI) also does not do so. Instead, the SCI is awarded to all controllers uniformly, regardless of their own track record, nearly the

opposite of a merit-based raise. The SCI is calculated for controllers based on the *Agency's success* in meeting four air traffic related goals: (1) reduction of operational errors; (2) reduction of runway incursions; (3) airport arrival efficiency rate; and (4) on-time performance. All controllers receive a 0.2% pay increase for each goal met. Thus, if all four goals are met, all controllers receive an identical pay increase of 0.8%.

The contract excuses controllers from all but minimal requirements to be eligible for the OSI and SCI pay increases. Controllers who have been with the FAA for at least 90 days are eligible for the OSI. For the SCI, only controllers who actually fail their ODP plans are ineligible. Thus, unlike other employees, controllers can receive the OSI and SCI whether they have received an unsuccessful performance rating, been disciplined for poor conduct, or even decertified for operational errors while managing air traffic.

Under the current AT Pay Plan, the OSI and SCI increases are paid using three separate calculations over the course of the year, which has the effect of compounding their benefits and thus acts as a hidden pay increase. In January of each year, controllers receive the OSI less 0.8%. In June of each year, controllers receive the remaining 0.8% of the OSI as well as the SCI, if any, with each increase compounding on the previous. A controller whose salary is at or above the current pay band maximum receives both increases as an increase to his base salary in the first year his salary exceeds the maximum. If the controller's salary is at or above the pay band maximum in subsequent years, the controller receives only half of the OSI and the SCI is paid in a lump sum.

3. The Agency's Proposals

The Agency's proposals with regard to annual pay increases are designed to ensure greater equity across the Agency's workforce and to control the growth of controller pay, which is among the highest of any category of federal government employees. By eliminated guaranteed raises above the government average, the Agency's proposals would reform the OSI and SCI increases for controllers so that they are actually dependent on organizational and individual performance. Lastly, the Agency's proposals would add eligibility criteria in order to ensure that the increases are paid only to employees who have demonstrated acceptable performance, and would simplify the method of paying the increases to the controllers who earn them.

a. Proposed Changes in the Annual Organizational Success Increase (OSI)

The Agency has proposed two important changes to the OSI pay increase for controllers. The first is to place controllers on the same footing as the rest of the Agency, which means that the FAA must meet its organizational performance goals before any increase is provided. Controllers play an important part in the FAA's success, and many of the performance metrics in the Agency's business plan are directly influenced by their performance. The Agency is proposing only to eliminate the guarantee that there will be a big increase even if the FAA fails in its goals. The OSI for

controllers would thus be the same as FAA employees under the Core Compensation Plan.³⁵

The second major change proposed by the Agency is to pay the OSI in a lump sum for controllers whose base pay exceeds the maximum base pay under the ATSP pay bands. Again, this is the same rule that applies to FAA employees under the Core Compensation Plan. Controllers whose base pay fall within the new pay bands (at this point, about four percent of the workforce) would receive the OSI as an increase in their base pay, up to the pay band maximum.

b. Proposed Changes in the Annual Superior Contribution Increase (SCI)

The Agency has proposed to change the formula for computing the individual performance raise (the SCI), so that it is actually based on individual performance.³⁶ Under the Agency’s proposal, the SCI would be computed according to the same formula that is used for FAA employees under the Core Compensation Plan. Controllers would be evaluated on three criteria: collaboration, customer service, and impact on organizational success. Based on their individual performance ratings, the SCI increase would be distributed to controllers as follows:

Level of Increase	Increase Amount	Target Percentage of Controllers
SCI-1	1.8%	20%
SCI-2	0.6%	45%
No SCI	0.0%	35%

All controllers would be eligible to receive an SCI annually, although those whose base pay exceeds the pay band maximum under the ATSP pay bands would receive the SCI as a lump sum rather than as an increase in their base pay. Again, the Agency is proposing to treat controllers on par with the rest of the Agency that is in the Core Compensation Plan.

c. Proposed Changes in Eligibility Criteria

The Agency has proposed new eligibility criteria for the OSI and SCI pay increases, in order to ensure that these increases are paid only to controllers who have demonstrated acceptable performance. In addition to the requirement that a controller have at least 90 days of FAA service and not currently be on an ODP, the expanded criteria for both increases would exclude controllers from the pay increases if they: (1) were unsuccessful in completing an ODP during the performance year; (2) received an

³⁵ The text of the Agency’s proposal regarding the OSI is in Section 8 of Article 108, Pay Rules, located in Appendix A.

³⁶ The text of the Agency’s proposal regarding the SCI is in Section 9 of Article 108, Pay Rules, located in Appendix A.

unsuccessful performance rating; (3) received a suspension, reduction in grade or pay for conduct or performance, or a removal letter during the performance year; or (4) were decertified from working as a controller for a period of time as a result of a performance deficiency. It is reasonable to expect that controllers meet these minimal criteria in order to receive a pay increased based on individual or organizational performance.

d. Proposed Changes Regarding the Administration of Pay Increases

The Agency has proposed to change the method of implementing the annual OSI and SCI pay increases for controllers, so as to eliminate the compounding effect of serial raises (a financial enhancement not provided to other FAA employees) and reduce complexity in administration. Rather than splitting the increases between January and June, the Agency has proposed to pay both increases in full in January. Accordingly, the entire dollar value of both increases would be calculated in January, based upon the controller's base pay in the prior year.³⁷ This proposal makes sense from an administrative standpoint. It eliminates the need for three sets of calculations, spread out between January and June of each year.

4. The Union's Proposals and the Agency's Response

The Union proposed the following as to the two annual increases (OSI and SCI) for controllers:³⁸

- Year 1: Controllers would not receive any OSI or SCI.
- Years 2 and 3: Controllers would receive the OSI as a lump sum payment calculated by current pay rules providing for higher than civil service increases and regardless of position in the pay band. Controllers would not receive any individual merit award (SCI).
- Years 4 and 5: Controllers would receive the agency-wide increase (OSI) to base pay even if their current base pay is over the band maximum (same as existing AT Pay Plan rules). Again, controllers would get no individual merit increases (SCI).

³⁷ The text of the Agency's proposal regarding the compounding of the OSI and SCI is in Section 9 of Article 108, Pay Rules, located in Appendix A. The existing rule providing for compounding of pay increases is in Section 2 of Article 36, Pay Administration, of the current agreement. The Agency proposed deleting Article 36 from the contract.

³⁸ The text of the Union's proposals regarding how the OSI and SCI are calculated is in Sections 8 and 9 of Article 108, Pay Rules, located in Appendix A. The Union's proposal regarding the award of the OSI and SCI during the first five years is in the Principal Memorandum of Agreement, located in Appendix A. The Union's proposal regarding compounding of pay increases is in Section 2 of its proposal on Article 36, Pay Administration, located in Appendix A.

While at first blush the NATCA offer might appear to benefit the Agency, any gains for the taxpayer from this structure would be temporary in nature and would evaporate after the first five years. That's because NATCA has insisted on including a full claw-back provision that would obviate any concessions: After the initial term of the agreement, today's scheme of automatic pay guarantees would return in full force. Controllers would thereafter receive their annual increases into their base salaries according to the existing AT Pay Plan rules, *i.e.* regardless of band "maximums," regardless of merit, regardless of Agency performance, and so on. The impact of this on Agency finances is overwhelming – potentially, a **\$ 3.7 billion** difference from the FAA proposal, if the contract were extended for five additional years when it next expires.

The NATCA proposal is a hodgepodge of conflicting approaches to compensation that hardly substitutes for a performance-based plan. Indeed, their plan repudiates the idea of rewarding controllers for individual merit. During the first year of the contract, the existing workforce would get no increase in compensation of any kind, a worse result than under the Agency plan. In Years 2 through 5, only the agency-wide OSI would resume, but provided as lump sums and not as base pay increases even to controllers below pay band caps. In Years 4 and 5, the OSI would again be added to base pay, yet it would be calculated under today's rules that push up the base pay "maximums" regardless of market data. The Agency "performance" increase would still not be related to organizational performance. Moreover, by eliminating the SCI from controller compensation, their proposal completely rejects any individual merit raises.

During negotiations, the Union advanced the following arguments against the Agency's proposal on annual increases and in support of their own. We address each of these in turn.

First, the Union claims that the Agency's OSI proposal would "freeze" the pay of 96% of controllers for three years (this being the percentage of controllers above the maximum base pay under the Agency's proposed pay bands). While it is true that these controllers would not see additional OSI increases in their base salaries until the bands were raised, this is the same rule that applies to other FAA employees and is a necessary part of the transition to a market-based pay system. (Of course, controllers and all FAA employees do receive annual locality increases to the base pay, which are retained in the Agency proposal.) Moreover, the controllers thus affected would receive cash awards equal to the full value of each year's pay raise. Thus, their total earnings (on average) will continue to rise.

Second, the Union theorizes that the Agency's proposal would encourage the non-reporting of operational errors, to whatever extent operational errors are to be used in rating controllers and then determining the amount of the annual pay increase. We believe this concern is not well founded. Reducing operational errors is already one of the four factors introduced in 2003 to compute NATCA's SCI pay increase. We have seen no evidence since that time that controllers are failing to report operational errors as a result.

Third, regarding the SCI, the Union has been highly critical of the use of “subjective criteria” to evaluate controllers’ individual performance and of the role of floor supervisors in making these judgments. More fundamentally, NATCA rejects the notion of individual controllers being rated based on their job performance – at least if those ratings are used to affect anything that matters. It prefers the current system, which gives every controller the same pay increase regardless of how well or poorly he or she does the job.

Individual performance evaluations are, of course, a routine part of the job environment in government service as well as in the private sector. Controllers, in fact, currently receive individual performance evaluations on an annual basis and like other employees may be disciplined for poor performance, but these things are simply not factored in pay raises. A true performance-based system requires that this now happen. Controllers who excel at their jobs deserve to be recognized and rewarded, and that is exactly what the Agency’s proposal seeks to accomplish.

C. Pay Premiums

1. Overview

Under the Agency’s proposal, controllers would continue to receive overtime, holiday pay, Sunday and night differentials, and on-the-job-training instructor (OJTI) premium pay at their current rates. The Agency would, however, phase out two pay premiums that other FAA and federal government employees do not receive: 1) Controller Incentive Pay (CIP) and 2) Controller-in-Charge (CIC). In FY 2005, these two premiums cost an average of \$2,700 per controller and represented 18% of the average total premium costs of \$15,000 per controller. Their total FY 2005 costs were:

Premium	Cost (FY 2005)
CIP	\$29.56 million
CIC	\$11.38 million
Total	\$40.94 million

The FAA has proposed eliminating these two pay premiums primarily because they have not proved beneficial to the Agency – if anything, they have created pay inequity within the NATCA workforce – and have not met their original objectives. Premium pay rates are intended to incentivize behavior – for example, holiday pay premiums are offered as a way of enticing an employee to give up his or her day off. The CIC premium was supposed to save the FAA \$164 million over first five years of the 1998 contract by allowing the Agency to operate with fewer supervisors. It did not. The CIP premium was originally envisioned as an enticement to recruit and retain controllers at “hard to staff” facilities. It has evolved, however, into an additional form of locality pay based upon cost of living with absolutely no linkage to facility recruitment or retention needs.

2. Controller Incentive Pay (CIP)

a. The Status Quo

Under the current AT Pay Plan, controllers working in certain locations across the United States receive the CIP premium based upon an indexed cost of living for the particular area surrounding the facility to which they are assigned. Although there are several different types of air traffic employees at each facility, only employees in the controller job series are eligible to receive the CIP premium. This means that controllers work side by side with, for example, with airways technicians who do not receive the same supposed “cost of living” adjustment controllers get.

Although the average amount of CIP paid to controllers receiving it was \$5,392 in FY 2005, but some controllers received well over \$10,000 in CIP.

	FY 2005 Per Employee CIP Total	Count of Employees
	\$12,000 - \$14,075	172
	\$9,000 - \$11,999	824
	\$6,000 - \$8,999	1,065
	\$3,000 - \$5,999	1,817
	\$1,000 - \$2,999	1,224
	<\$999	380
Average CIP per Recipient	\$5,392	5,482
Average Over All Controller and TMC/S FTEs	\$1,955	15,110

The Agency’s original rationale for implementing the CIP program in 1998 was to offer an incentive to attract and retain controllers at particularly hard to staff facilities, where facility-based pay levels (which are based on traffic volumes and complexity) did not correlate with the high cost of living. (Aspen, Colorado would be an example.) In this respect it was intended to accomplish a different result from the locality adjustment that all federal government employees (including controllers), which is based on cost of living figures for various localities across the United States and does not vary based on neighborhoods. But CIP quickly became just another layer of pay, ranging from 0.7% to 10% of a controller’s base, an extra “bonus” for some 36% of NATCA bargaining unit employees.

This unfortunate result followed from the haphazard choice of locations for this program, a pattern which makes almost no sense. The current CIP is based solely on the cost of living in the area immediately surrounding the specific facilities, regardless of where controllers actually live or the cost of living of metropolitan regions. In the Minneapolis area, for example, there are five air traffic control facilities within 15 to 20 miles of each other and the five are assigned four different CIP percentages based upon the cost of living in the neighborhood of the facilities. Controllers working at the five facilities, however, could all live in the same neighborhood, but receive very different levels of CIP. Today, controllers at more than 100 air traffic facilities (out of a total of 315 facilities) receive CIP, with no linkage to recruitment needs and/or retention. Thus, CIP is no longer limited to “hard to staff” facilities, as was originally intended.

b. The Agency’s Proposal and the Union’s Objections

There is no evidence to support the idea that CIP has ever been an effective recruitment and retention tool for the Agency. The current program makes no sense and does not do what is supposed to do: attract and retain controllers at hard to staff facilities. Because the CIP premium no longer serves its intended purpose, the Agency believes it is an appropriate area for achieving cost savings.

The cost of the CIP premium is substantial, and has risen significantly in recent years:

Fiscal Year	CIP Costs Paid
2000	\$ 23.04 M
2001	\$ 27.16 M
2002	\$ 28.49 M
2003	\$ 29.19 M
2004	\$ 29.77 M
2005	\$ 29.56 M

The Agency has proposed to phase out the CIP premium over the course of five years.⁴⁰ Under the Agency’s proposal, controllers who currently receive CIP will receive 80% of the current rate in the first year, 60% in the second year, 40% in the third year, 20% in the fourth year, and no CIP in the fifth year. For example, if a controller works at a facility with a CIP of 10%, he will receive 8% in the first year (80% of 10%), 6% in the second year, etc. In place of the CIP program, the Agency proposed to implement a recruitment, retention, and incentive program with amounts paid at the Agency’s discretion at facilities to be determined by the Agency using some of the funds currently allocated to the CIP program, similar to the existing Core Compensation Plan.

⁴⁰ The Agency’s CIP proposal is in Section 12 of Article 108, Pay Rules, and the Union’s is in Section 12 of Article 108, Pay Rules, both located in Appendix A.

The Union has proposed not only to retain the CIP premium, but to expand it to the NOTAM Specialist bargaining unit – thereby providing those employees with a 4.6% pay increase. The Union believes that CIP has allowed the Agency to attract controllers to high cost of living areas, but has not substantiated that claim.

3. Controller-in-Charge (CIC) Premium

a. The Status Quo

The CIC is a 10% premium paid to controllers for substituting as the “floor” supervisor for periods of time ranging from a few minutes to hours. While the concept of a “controller in charge” has been in place at the FAA for decades, only in the 1998 agreement did the prior Administration decide to pay a premium for such tasks. The rationale for a pay premium was apparently that by increasing the controller-to-supervisor ratio from 7:1 to 10:1 and paying CICs a 10% premium while assuming these duties, the Agency would achieve savings of approximately \$164 million over the life of the agreement.

But savings of this magnitude never materialized. In fact, from 1999 through 2003 the cost for the CIC premium pay was over \$41.5 million. This resulted in net savings that were a fraction (13%) of the \$164 million savings that had been promised. These savings then disappeared altogether when Congress froze funding for the CIC program, restored funding for supervisors and directed the FAA to increase supervisor staffing levels by the end of 2001. In 2002, the Congress redirected an additional \$4 million to hire more supervisors. Importantly, the appropriations committees made the assumption that with the hiring of these supervisors, the CIC hours paid would also be reduced.

Contrary to Congress’s expectation, the costs and hours associated with the CIC premium have just continued to rise:

Fiscal Year	CIC Costs Paid	CIC Hours Paid
1999	\$5.93 M	2,021,419
2000	\$6.70 M	2,024,284
2001	\$8.35 M	2,244,884
2002	\$9.76 M	2,435,141
2003	\$10.78 M	2,520,736
2004	\$11.46 M	2,548,137
2005	\$11.38 M	2,397,257

b. The Agency’s Proposal and the Union’s Objections

The Union has proposed retaining the CIC premium as it currently exists.⁴¹ The Union's rationale is that when controllers act as CICs, they are essentially serving as "watch supervisors" and have commensurate responsibilities, including correcting the performance of other controllers "on the spot." The Union has emphasized that when controllers take on additional duties, they must be compensated for it.

The Agency views the role of CIC as involving operational oversight, not "watch supervision," and a regular part of the job controllers have done for decades. CICs do not evaluate performance, apart from rare "on the spot" corrections. On midnight shifts at many facilities, and even during the day and evening at smaller facilities, there may be only one controller on duty. Today, that controller gets a 10% CIC premium – to supervise himself – with no assumption of additional duties. Moreover, the CIC premium has also had a detrimental impact on the Agency's ability to recruit controllers into supervisory positions. An employee who is promoted to a supervisory position generally receives a salary increase of up to 4%. However, with the current structure of paying controllers a 10% premium while performing CIC duties, there is little incentive for a controller to become a supervisor. He can remain in the bargaining unit and earn more than most of his supervisors.

While the Agency has proposed to retain the CIC position, there is no justification for continuing to pay a premium for a routine assignment of work. The Agency has not realized the expected cost savings and operational improvements since the CIC concept was monetized by the 1998 agreement. The added expense of maintaining the premium is not justified by the limited additional work that may be required. Therefore, the Agency proposed eliminating the 10% premium paid to controllers when they are assigned CIC duties.⁴²

D. Pay Setting and Pay Retention

1. Overview

The Agency has proposed to change the rules used to set controllers' pay under a variety of circumstances: 1) during training; 2) when they transfer between facilities; and

⁴¹ The text of the Union's proposal regarding CIC pay is in Section 3 of Article 18, Controller-in-Charge (CIC), located in Appendix A. Note that the 10% premium applies not only to the ATCS bargaining unit, but also to TMC/S bargaining unit when assigned Traffic Management Coordinator-in-Charge (TMCIC) and Traffic Management Specialist-in-Charge (TMSIC) duties and the NOTAM Specialist bargaining unit when assigned NOTAM Specialist-in-Charge (NSIC) duties. The Agency proposal eliminated the 10% premium for all three bargaining units.

⁴² The text of the Agency's proposal regarding CIC pay is in Article 18, Controller-in-Charge (CIC), located in Appendix A. The proposal does not mention the 10% CIC premium, thereby eliminating it.

3) when their facility's classification level changes. The Union has proposed to maintain the current system for setting pay in all of these situations.⁴³

When the current controller compensation system was established in 1998, it was based on the premise that controllers' pay should directly correlate with the volume and complexity of the air traffic they control. The Agency conceded that all controllers at the same facility would be placed in the same band, regardless of the individual difficulty of their jobs. This was a significant concession – and resulted in large, immediate increases for many controllers. But the contract's pay-setting rules at issue here go much further, and by design they effectively gut the whole idea of linking pay to job complexity.

In a variety of circumstances, the pay rules are structured so as to quickly elevate compensation before controllers demonstrate their capabilities in different jobs and to retain the high pay levels even when job performance or facility level decreases. When controllers are in training, the current system sets their pay at levels that are completely disproportionate to their actual responsibilities. The same is true for controllers who voluntarily transfer to higher level facilities under the current system. They are guaranteed big increases before demonstrating the skills they need to work safely and effectively at their new facility. Likewise, when a facility's level is raised due to an increase in volume or complexity of traffic, all controllers working there get pay increases regardless of where their existing salary is within the pay band of the new, higher level. But conversely, when a facility's classification level is lowered due to a fall off in traffic, controllers keep their current, higher level pay for years afterwards, even though it may far exceed the pay associated with the level of air traffic they actually control.

In short, under the current contract, the relationship between controller pay and facility level is maintained only in one direction – *upwards*. The FAA thus gets little benefit from the bargain it made here in 1998; the result of these rules is just constant escalation of pay, not increases in productivity. The Agency's proposals are designed to restore a logical relationship between work performed and compensation received.

2. Summary of the Status Quo

A fundamental premise of the current AT Pay Plan is that a controller's compensation should directly correlate with the volume and complexity of the air traffic he controls. When the FAA moved from the GS compensation system to the current AT Pay Plan, it also changed the way it classified ATC facilities. The classification level of a particular facility is now determined by the overall volume and complexity of air traffic within its airspace. An ATC-12 level facility, for example, controls a combination of increased volume and more complex air traffic than an ATC-9 level facility, thus Level 12 controllers are paid commensurately more.

⁴³ The text of the Agency's and Union's proposals is in Article 108, Pay Rules, located in Appendix A.

a. Pay Setting for Trainees

Under the existing AT Pay Plan, the pay of controllers who are in training, known as developmental controllers or “developmentals,” is tied to certain benchmarks they achieve as they progress to becoming fully certified at their facility, i.e. as a Certified Professional Controller (CPC). A benchmark is a measurable point in the training process, such as being certified to work independently on two radar positions within a particular facility.⁴⁴ As each benchmark is achieved, developmental controllers receive a pay increase. The current benchmarks and associated base pay are:

Benchmark	Base Pay Calculation
Academy Graduate ⁴⁵ (AG)	85% of ATC-3 pay band (\$38,080 to \$53,312)
D1	55% of pay band minimum for facility ATC level or AG base pay plus 6.7%, whichever is greater.
D2	70% of pay band minimum for facility ATC level or D1 base pay plus 6.7%, whichever is greater.
D3	85% of pay band minimum for facility ATC level or D2 base pay plus 6.7%, whichever is greater.
CPC	Pay band minimum for facility ATC level or D3 base pay plus 6.7%, whichever is greater.

Unfortunately, the base pay for each developmental benchmark does not correlate with the skill level needed at that stage in their training. For example, a developmental controller at an en route center must be certified to work independently on the Flight Data position in order to achieve the D1 benchmark. A D1 level developmental controller’s skills are in no way equivalent to those of a fully-certified controller or CPC.

⁴⁴ The skills that a developmental controller must possess at each training benchmark (D1, D2, and D3) vary by type (control tower, TRACON, or en route center) and level of facility. For example, at an en route center, in order to achieve the D1 level, a controller must be certified to work independently the Flight Data (FD) position and 25% of all other operational positions. For the D2 level, he must be certified to work the FD position and 50% of all other operational positions. Once a developmental is certified to work independently on all operational positions, he is considered to be a CPC. Not all facilities have three developmental stages, i.e. D1, D2, and D3. Lower level facilities may only have one or two stages due to the volume and complexity of air traffic.

⁴⁵ Most controllers attend the FAA Academy at Oklahoma City, OK, for initial training before going to work at their permanent air traffic control facility. Academy instruction is designed to teach the fundamentals of air traffic control. Training continues at their permanent facility, where they learn to apply those fundamentals to the unique requirements of their facility.

The D1 developmental controller's base pay, however, is set at least 55% of a CPC's base pay. The disparity continues throughout the remaining developmental benchmarks. Paying developmental controllers significantly more than their abilities warrant contributes only to unsustainable growth of the FAA's payroll.

b. Pay Setting for Transfers

Under the current compensation system, controllers who *voluntarily* transfer to a higher level facility are guaranteed pay increases regardless of their current salary or the new facility's budgetary or recruiting circumstances. The AT Pay Plan provides that a transferring controller's pay is set at the minimum of the pay band of the facility to which he is transferring or is increased by 6.7%, whichever is greater. Ignored is the fact that his current pay may already be well within the pay band of the new facility due to substantial pay band overlap.⁴⁶

For example, the existing pay band for an ATC-11 level facility ranges from \$97,947 to \$137,126, while the pay band for an ATC-12 level facility ranges from \$102,846 to \$143,984. A controller currently earning \$130,000 at an ATC-11 facility who *voluntarily* transfers to an ATC-12 facility would get at 6.7% raise even though his base pay is already far greater than the ATC-12 pay band minimum. In fact, his new base pay of \$138,710 (\$130,000 plus 6.7%) would put him near the top of the ATC-12 pay band. More importantly, the controller is guaranteed this increase regardless of whether the new facility's budget can absorb that level of pay and whether the facility has had any difficulty recruiting controllers.

A controller transferring to a new facility, regardless of the level, must progress through the training benchmarks before becoming certified at the new facility. But under the current system, a controller transferring to a higher level facility receives half of his increase when he initially transfers to the facility and the other half when he becomes certified. Continuing the above example, a controller earning \$130,000 at an ATC-11 facility who voluntarily transfers to an ATC-12 gets half of the 6.7% increase the minute he begins working at the new facility, making his base pay \$134,355 while in training. Thus, the transferring controller's pay immediately exceeds his abilities at the new facility where he is trying to be certified.

c. Pay Setting for Facility Upgrades

The volume and complexity of air traffic controlled by a particular facility may change over time due to any number of factors, such as an airline increasing service at an airport within the facility's airspace. A facility's air traffic may increase sufficiently to justify an upgrade to the next facility classification level, e.g. moving from an ATC-11 to an ATC-12. Under the AT Pay Plan rules, the base pay of controllers at an upgraded

⁴⁶ When a controller voluntarily transfers to a position at a lower level or same level facility, he keeps his current base pay if it fits within the pay band of the new facility; otherwise his pay is set at the pay band maximum. The Agency did not propose changing this rule.

facility is automatically increased to the point where it represents the same percentage of the higher band as their current pay does in the band from which they move. But here again, the current contract guarantees a *minimum* increase of 6.7% regardless of their placement in the higher pay band.

For example, assume the facility classification level of a controller assigned to an ATC-9 facility earning \$110,000 is upgraded to an ATC-10 level facility. The minimum and maximum of the current ATC-9 pay band are \$80,925 and \$113,295, respectively; a range of \$33,000. A controller earning \$110,000 is 88% through the ATC-9 band. His new base pay as an ATC-10 level controller would therefore be 88% of that pay band's range or his current base pay plus 6.7%, whichever is greater. The minimum and maximum of the current ATC-10 pay band are \$93,063 and \$130,288, respectively; a range of \$37,225. Eighty-eight percent of the ATC-10 pay band is \$125,821, which gives the controller a 14% increase over his current base pay of \$110,000.

d. Pay Setting for Facility Downgrades and Pay Retention

When the volume or complexity of the air traffic handled by a particular facility decreases sufficiently over a period of time, the facility is downgraded to the next lower classification level. But under the AT Pay Plan, controllers working at a facility that is downgraded retain their current *classification level* for two years and receive pay raises as if traffic at the facility was still at its former volume and complexity. And for pay purposes they retain their salaries indefinitely.

The effect of the rule on pay retention is that the controllers maintain their current base pay long after the facility is downgraded and they continue to receive all annual pay raises (OSI and SCI) for a two year period. Even if their existing base pay exceeds the maximum of the lower level pay band, they still receive half of the OSI as an increase to their base pay and receive any SCI as a lump sum payment. At no point, however, is the controllers' base pay ever reduced to fit within the parameters of the lower level pay band.

Using the above example, assume a controller currently earns \$125,000 at an ATC-10 level facility. Should the facility be downgraded to the ATC-9 level, he would retain his base pay of \$125,000 even though it now exceeds the ATC-9 pay band maximum of \$113,295. Furthermore, he would continue to receive the annual pay raises as increases to his base pay of \$125,000 for two years. After that, he would receive half the OSI as an increase to his base pay and any SCI in a lump sum payment. His base pay, though, could exceed the maximum of the ATC-9 pay band indefinitely, meaning that his pay would no longer be directly correlated to the level of air traffic he controlled. In effect, the controller would receive ATC-10 level pay for ATC-9 level work.

3. The Agency's Proposals

The Agency's proposals with regard to pay setting for developmental controllers, transferees, facility upgrades, and facility downgrades are designed to establish the

proper linkage between the level of work performed by controllers and the level of compensation received. In addition to more closely aligning compensation and work performed in these situations, the Agency’s proposal would also control the growth of the NATCA payroll, providing additional relief to the Agency’s budget.

a. Pay Setting for Trainees

The Agency has proposed changing the methodology for compensating developmental controllers in order to align their pay more closely to their actual proficiency. The Agency’s proposal is based upon the difference between an Academy Graduate’s base pay of \$31,700 and the pay band minimum of the facility where he is assigned, which seems more than fair for an apprenticeship:

Benchmark	Base Pay
AG	\$31,700
D1	AG base pay plus 25% of difference between AG base pay and pay band minimum for facility ATC level.
D2	AG base pay plus 50% of difference between AG base pay and pay band minimum for facility ATC level.
D3	AG base pay plus 75% of difference between AG base pay and pay band minimum for facility ATC level.
CPC	Pay band minimum for facility ATC level.

For example, assume that a developmental controller’s base pay is \$31,700 upon graduating from the FAA Academy and that he is assigned to an ATC-12 level facility where the pay band minimum is \$74,950 (based upon the Agency’s proposed ATSP). Upon achieving D1 status, his base pay would increase to \$42,512, which is calculated as AG base pay of \$31,700 plus 25% of the difference between AG base pay and the CPC band minimum. When the developmental controller ultimately achieves CPC status, his base pay would be the pay band minimum of \$74,950.

b. Pay Setting for Transferees

The Agency has proposed giving its facility managers greater flexibility when recruiting controllers, consistent with the Air Traffic Organization’s goal of becoming more productive and staffing effectively across the entire National Airspace System. A critical component of this effort is keeping costs within a prescribed budget. One of the ways facility managers can do that is by effectively managing personnel costs. But guaranteeing controllers at least a 6.7% increase when they *voluntarily* transfer to a higher level facility removes that facility manager’s ability to control the local budget. It also ignores other pertinent factors such as whether the facility in reality has any problems in recruiting qualified applicants.

The Agency proposal would allow managers to increase the base pay of controllers who request a transfer to a higher level facility by 0% to 15%, so long as the resulting base pay is within the bands of the new facility. The facility manager can take into

consideration the controller's current base pay and where it fits into the higher pay band; the facility's budget and the pay levels it can absorb; and the level of pay increase that has to be offered in order to recruit qualified candidates to the facility. If the facility has no problem attracting qualified candidates due to a desirable location, for example, the manager can offer a smaller increase and vice versa. The Agency's proposal also would align the increase that is offered to the transferring controller with his ability to work at the new facility, based on his progression through the training process.

Under the current system, the controller receives half of his guaranteed increase upon transferring to the new facility and the other half when he became certified there. Under the Agency's proposal, the transferring controller would receive his salary increase using the same methodology that applies to a developmental controller progressing through the training process. For example, assume that a controller earning \$80,000 at an ATC-11 facility (using the Agency's proposed ATSP pay bands) accepts a position at an ATC-12 facility with a 10% increase, meaning that his target base pay at the new facility would be \$88,000. Under the Agency's proposal, he would receive 25% of the difference between his previous base pay of \$80,000 and his target base pay of \$88,000 upon achieving the D1 training benchmark, making his D1 pay \$82,000. The controller would receive the remainder of the increases as he moves through the training benchmarks.

The rationale for using the same methodology for voluntary transferees and trainees is the same: the controller's effectiveness and utility at his new facility is limited until he successfully completes the training there. Therefore, he should be paid commensurate with his current skill level. The Agency's proposal also creates an incentive for the controller to progress through the training benchmarks as quickly as possible in order to get subsequent pay increases. Finally, the Agency's proposal helps slow the growth of controller payroll costs.

c. Pay Setting for Facility Upgrades

Under the Agency's proposal, the base pay of a controller assigned to a facility that is upgraded to the next classification level due to an increase in traffic volume or complexity would be increased to the minimum of the new, higher level pay band or by 4%, whichever is greater. For example, a controller at an ATC-11 facility earning \$85,000 that is upgraded to an ATC-12 facility would receive a 4% increase in base pay to \$88,400 because his current pay is already over the ATC-12 pay band minimum of \$74,950, using the Agency's proposed ATSP rates. Controllers whose base pay is within 4% of the new ATSP pay band maximum would have their pay set at the top of the band. Currently, as noted earlier, the *minimum* increase for a facility upgrade is 6.7%. Thus, the Agency's proposal would still provide controllers whose facility is upgraded an increase in base pay, but controls payroll costs by limiting the amount of the minimum increase.

d. Pay Setting for Facility Downgrades and Pay Retention

The Agency's proposals regarding pay setting for facility downgrades are designed to compensate controllers for the level of air traffic they actually control. Under the Agency's proposal, a controller working at a facility that is downgraded due to decreased traffic volume would continue to earn his current base pay if it fits within the pay band of the lower facility level. Otherwise, his base pay would be reduced to the maximum of the pay band of the lower facility level or by 4%, whichever would give him the greater salary. Assume, for example, that a controller works at an ATC-10 level facility and earns \$75,000. If the facility is downgraded to an ATC-9 level, he would keep his current base pay of \$75,000 because that is within the ATC-9 pay band range of \$55,200 to \$78,050, using the Agency's proposed ATSP rates. If that same controller's current base pay was \$82,000 at an ATC-10 facility, however, his pay would be reduced by 4% to \$78,720 upon downgrade to an ATC-9 level.

4. The Union's Proposal and the Agency's Response

The Union proposes maintaining the *status quo* with regard to all of the pay rules discussed above. During negotiations the Union did not articulate any specific objections to the Agency's proposals. In our view, continuing to apply the existing pay rules totally undermines the notion of "pay for performance" and leads to increased costs for the Agency that are out of proportion to the benefit received. The Agency's proposals on these issues should result in controllers being compensated for the actual level of work they can and do perform; a fundamental principle of a performance-based compensation system, as well as the premise behind the 1998 agreement.

E. Union Proposals for New Benefits and Other Changes to the Personnel Management System

During negotiations and in its last offer the Union requested several new benefits, or increases in existing benefits, that go well beyond what the FAA (or in some instances, the entire federal government) does for its employees. Not surprisingly, these proposals would be inordinately expensive to accept. Because one of the Agency's principal goals has been to restore equity among FAA employees to the greatest extent possible, we turned down these requests.

1. Annual Leave

The Union proposed (and the Agency rejected) allowing controllers to "sell back" to the Agency all annual leave they were unable to schedule during the current leave year. Included in the bank of leave for sale would be all annual leave that a controller has accumulated to date, accrued by the end of the leave year, or restored. Again, this practice would provide a vastly greater benefit than other FAA employees or civil servants receive and appears to be completely without justification.

Under the current system, controllers have the opportunity to schedule and take all annual leave they are entitled to during a leave year, and the Union has not

demonstrated that controllers have problems doing so. Should a controller be unable to take all of his annual leave and at risk of losing some (“use or lose” status) due to exigent circumstances, Agency policy contains provisions to allow the controller to carry over more than the allowable amount, which is currently 240 hours. There is no reason to create a unique and costly “sell back” benefit for NATCA.

2. Child Care Subsidy

The Union proposed the creation of a child care subsidy program that would provide subsidies to controllers whose total family income does not exceed \$62,518.⁴⁸ Under the Union’s proposal, subsidies would be provided to controllers on a sliding scale based on income, ranging from 30% of child care costs for the lowest income group to 5% to the highest income group. While Public Law 107-67 allows federal agencies to use appropriated funds to establish child care subsidies at the agencies’ discretion, the FAA has not yet decided to establish such subsidies for any of its employees.

The Agency objects to this proposal because it would create a non-standard benefit for controllers at a cost of \$65 million over five years. The Union has not demonstrated that the Agency has problems attracting or retaining controllers due to the absence of this benefit. In fact, the Agency already operates nineteen child care facilities around the country, fourteen of which are located at air traffic control facilities, at an estimated annual cost to the taxpayers of \$1.8 million. Most of these existing facilities are underutilized and less than half of the children who attend them belong to federal government employees.

3. Tuition for Dependent Children Outside the Continental U.S.

The Union proposed that, under criteria established by the Department of Defense, the Agency certify as eligible to attend the DOD school system the children of all controllers currently assigned to any FAA facility located outside the continental United States (CONUS)⁴⁹. The Union further proposed that, should the controller elect not to enroll his children in the DOD school system, the Agency would then pay for tuition at an educational institution of his choice, up to the amount of the tuition of the applicable DOD school system. This would apply to any controller who has return rights to a position within the CONUS, as well as controllers that might be involuntarily reassigned to the mainland.

The Agency strongly objects to this proposal because it would extend the current tuition reimbursement program to controllers who have voluntarily chosen to make a non-CONUS location their permanent residence. The current Agency policy regarding tuition

⁴⁸ The text of the Union’s proposal is in Article 116, Child Care Subsidy, located in Appendix A.

⁴⁹ The text of the Union’s proposal is in Article 120, Dependent Education at Non-CONUS Locations, located in Appendix A.

reimbursement already provides that employees who meet certain criteria are eligible to enroll their dependent children in the DOD school system. Under these criteria, an employee must be assigned to a position in Puerto Rico or Guam either with: documented return rights to a position in the Continental United States (CONUS); a written mobility agreement that could require the employee's potential involuntary reassignment to a position in CONUS; or to a location officially designated by management as under consideration for closure with a potential involuntary reassignment to a position in CONUS. The Agency sees no need to expand this program beyond its current parameters.

4. Student Loan Repayment Program

The Union has requested a student loan repayment program for controllers under which the Agency would repay all or part of any outstanding federally-insured student loan taken out by a current controller or applicant for a controller position to whom an offer of employment has been made.⁵⁰ The controller receiving the repayment benefit may have more than one loan outstanding, with repayments up to \$10,000 per calendar year or a total of \$60,000 over the career of the controller. Controllers who receive this benefit would be required to enter into a service agreement promising one year of service for each year of loan repayments. The Union argues this benefit would help recruit or retain highly qualified personnel.

The Agency rejected this proposal. The Agency has not experienced any problems whatsoever in recruiting or in retaining controllers based on their student loan debt, which makes sense given that the job does not require expensive, professional degrees and is highly paid by most taxpayers' standards. Most of the training required of controllers is provided on-the-job and controllers are paid a small salary while receiving that training, either at the FAA Academy or at the facility where they are assigned.

5. Convert NOTAM Specialists to the AT Pay Plan

The Union proposed placing NOTAM Specialists into the ATC-8 level pay band under the current AT Pay Plan.⁵¹ Under the Union's proposal, NOTAM Specialists would be considered employees of the Air Traffic Control System Command Center, where they are currently located, for purposes of the Controller Incentive Pay (CIP) program. This would entitle them to an additional 4.6% increase to their base pay. The Agency objects to this proposal because the NOTAM Specialist bargaining unit is under the Multi-Unit Compensation Pay Plan implemented in 2005. Additionally, the Agency has proposed eliminating the CIP program for all employees.

⁵⁰ The text of the Union's proposal is in Article 143, Student Loan Repayment Program, located in Appendix A.

⁵¹ The text of the Union's proposal is in Section 15 of Article 108, Pay Rules, located in Appendix A.

VI. Issues in Dispute: Other Changes to the Personnel Management System

The Agency proposed a number of other changes to its Personnel Management System that do not bear directly on compensation and benefits. These proposals dealt with annual leave; the duties assigned to controllers; controller staffing on holidays; relief breaks for controllers; overtime rules; and dress code for controllers. While there may be some cost savings from the Agency's proposed changes, their primary intent is to provide the FAA with much-needed flexibility in managing its complex and demanding operation. The Union opposed each of these changes and, in most cases, proposed continuing the *status quo*.

A. Annual Leave

The Parties disagree over three issues regarding annual leave (aside from the three new annual benefits the Union discussed in Section V.E.1 above). They are: 1) the continuation of a "prime time" leave periods at each facility with a guarantee of two weeks of consecutive vacation at the height of the busy summer travel season; 2) eligibility to earn credit hours to cover for another employee whose annual leave request was denied; and 3) the work schedule of a controller who cancels annual leave.⁵² The Agency's proposals on these issues are designed to give management greater flexibility managing the Agency's resources and would eliminate antiquated work rules. The Union's proposals are essentially, "more of the same."

1. "Prime Time" Leave Periods

The current agreement provides that the Parties at each facility will negotiate "prime time" leave periods so as to allow all controllers a minimum of two consecutive or non-consecutive weeks of annual leave during the selected period(s). Prime time leave periods usually fall in the busy summer months – when airline travel peaks -- but can vary by area of the country based on local vacation preferences. Requiring management to schedule two weeks of annual leave for every controller during the prime time period(s) results in significant additional costs for the Agency because controllers must be brought in on overtime in order to cover for those who are taking their prime time annual leave.

The Agency has proposed eliminating the concept of prime time leave periods in order to regain flexibility over scheduling and staffing. The Agency proposal still allows controllers to schedule two consecutive or non-consecutive weeks of annual leave if

⁵² The text of the Agency's and Union's proposals is in Article 24, Annual Leave, located in Appendix A.

they so desire, but the leave would have to be distributed by the workforce throughout the year, avoiding the need for constant overtime during the busiest air travel periods.

The Union proposed that the prime time leave period begin on Memorial Day and end on Labor Day each year, unless the Parties at the facility level mutually agree otherwise. The Union also proposed that if the Agency is not able to accommodate a controller's request for two consecutive or non-consecutive weeks of leave, the controller be able to "sell back" the leave under the program Section V.E.1 above. The result of the Union's proposal is that all controllers at a facility would schedule two weeks of leave during the three busiest months, leaving the Agency short-staffed and requiring the use of overtime. This is an inappropriate expense.

2. Credit Hours to Cover for Denied Leave

The Union proposed that if a controller's request for annual leave is denied, then another controller not scheduled to work could volunteer to earn credit hours to allow the first controller to take leave. For example, assume Mary wants to take eight hours of annual leave for her next shift, but the Agency cannot accommodate her request due to a lack of staffing. Under the Union's proposal, John, who is not scheduled to work the shift Mary wants to take off, can volunteer to earn credit hours for that shift, in effect working in place of Mary.

The Agency did not agree to the Union's proposal because it effectively creates another "time off" liability for the Agency. Using the above example, if John works Mary's shift so she can take leave, he earns eight credit hours. The Agency still pays Mary but now also owes John eight hours of time off, creating a new debt of time off where one did not previously exist. The Agency already accrues significant overtime costs ensuring that controllers are allowed to take all of the annual leave they are entitled to in a year without creating additional demand.

3. Procedures for Cancellation of Leave

The Union has proposed maintaining an arcane provision in the current contract allowing controllers to cancel leave at any time "unless operational requirements dictate or allow assignment to a different shift." Under this provision, a controller can simply appear for work on a shift for which he had scheduled time off and announce that he has changed his mind and is canceling his leave. The Agency must then allow him to work that shift regardless of whether he is needed or not. The Agency regularly uses overtime to replace controllers out on annual leave. When a controller cancels leave at the last minute, it is often too late to cancel his replacement's overtime shift, resulting in the Agency paying two controllers (one at the overtime rate of time and a half) when only one is needed operationally.

The Agency proposed allowing controllers to cancel annual leave at any time prior to the posting of the watch schedule, which is usually twenty-eight days in advance. Once the watch schedule has been posted, annual leave can only be cancelled with

management's approval. If the Agency approves the cancellation of leave after the watch schedule has been posted, management would decide which shift the controller will be assigned. The Agency's proposal allows managers to more effectively utilize resources and avoids situations where the Agency is paying for two controllers when it only needs one.

B. Work Assignments

The Parties are in disagreement over one issue regarding work assignments.⁵³ The Agency proposed maintaining the current contract provision, which was included in 1998 as the basis for asserted productivity gains. The Agency view is that in assigning work to controllers (a statutory management right), the duties assigned need only have a reasonable relationship to the controller's official position description, including functions such as training, briefings, and quality assurance. The Union's proposed change would take away this flexibility. Under their proposal, FAA controllers could only be required to perform the duties literally as written into their official position description, which is to separate and control live air traffic; and that if the Agency wants them to do other work, it must first modify their position descriptions (or pay them more).

The Agency's proposal gives it the ability to use controllers to perform other air traffic control-related duties when they are not needed operationally, while the Union's mechanical limitation would result in controllers being paid for extensive periods of unproductive time.⁵⁴ Furthermore, the Agency is not proposing that controllers take on any duties that do not already perform.

C. Holidays

Another issue in dispute between the Parties is whether the Agency should be able to adjust holiday staffing levels to actual traffic on those days.⁵⁵ Traditionally, air traffic increases in days preceding and subsequent to a holiday, but is generally lower on the holiday itself, e.g. most people fly on the days before Thanksgiving Day, but very few fly on Thanksgiving Day. The Agency's proposal reserves for management the right to excuse controllers from working on a particular holiday if they won't be needed. In making this determination, Agency managers will consider previous year's statistics

⁵³ The text of the Agency's and Union's proposals is in Article 17, Position Descriptions, located in Appendix A.

⁵⁴ The Agency is not proposing to eliminate controllers' relief breaks after working an operational position. It is proposing that after controllers have had a reasonable break and they are not currently needed in the control room, they perform other necessary air traffic control-related duties.

⁵⁵ The text of the Agency's and Union's proposals is in Article 28, Holidays, located in Appendix A.

regarding air traffic at the particular facility and other forecasts. In the end, though, the Agency believes it should be able to decide the number of controllers necessary to perform the work available.

This issue has significant financial implications because controllers who actually work on a holiday are entitled to eight hours of holiday pay for their shift in addition to their regular pay for the shift. Controllers who are scheduled to work on a holiday but are excused are still paid – but they receive regular pay for that shift. Because the Agency effectively pays double time for working on a holiday, excusing excess personnel on holidays saves the taxpayer money, while leaving employees essentially whole.⁵⁶ No one should be entitled to receive double pay for a day when their services are not required and for which they will otherwise receive normal pay. The Agency proposal is an appropriate way of lowering costs.

The Union proposed maintaining the existing rules, which leads to wasteful staffing on holidays. Also, under their proposal, when making any determination to reduce controller staffing on a holiday, the Agency would have to undertake a cumbersome analysis of historical air traffic activity. The Union’s proposal is designed to maximize controller compensation at taxpayer expense.

D. Relief Breaks

The Agency and the Union are in disagreement on two issues with regard to relief breaks.⁵⁷ The first involves how long controllers work an operational position, i.e. controlling live air traffic, before receiving a relief break, and the second concerns who may approve a controller’s absence from the facility during a work shift. The provision in the current agreement that addresses the length of time controllers should remain “on position” before receiving a relief break has caused numerous disagreements between the Parties over the years and generated literally tens of thousands of grievances by controllers.⁵⁸

The Agency’s proposal is designed to reflect its intent that controllers should not normally work more than two consecutive hours “on position,” but in certain circumstances this may be unavoidable: “The Parties recognize that there may be times

⁵⁶ Neither the Agency nor the Union proposed changing how controllers who actually work on a holiday or how controllers who are excused from work on a holiday are compensated.

⁵⁷ The text of the Agency’s and Union’s proposals is in Article 33, Position Rotation and Relief Periods, located in Appendix A.

⁵⁸ The current contract provision states: “Unless operational requirements do not permit, employees shall not be required to spend more than two (2) consecutive hours performing operational duties without a break away from operational areas.” This has been interpreted by many controllers as a guarantee that they will not be required to work more than two hours on position at a particular time, resulting in numerous grievances filed by controllers who worked just a few minutes over two hours on position.

based on staffing and workload that employees will exceed two (2) consecutive hours on position. The Parties further recognize that not exceeding two (2) consecutive hours without a break away from operational areas is the mutual goal.” The Union’s proposal goes much further: “Unless staffing and workload do not permit, employees shall not be required to spend more than two (2) consecutive hours performing operational duties without a break away from operational areas.” The Union’s proposal perpetuates a misguided and costly assumption that unless a relief break is provided exactly every two hours – regardless of traffic levels or the operational environment – controllers must receive extra compensation.

The second dispute with regard to relief breaks involves who may allow a controller to leave the facility during his work shift. Controllers work a “straight” eight hour shift, which includes a paid thirty minute meal break, as opposed to most other FAA and federal employees who work an 8.5 hour shift, including an unpaid thirty minute meal break. The reason controllers work eight hours rather than 8.5 hours is that they are subject to immediate recall to operational duties. Because controllers are subject to recall, they are generally not allowed to leave the facility during their shift. The Agency’s proposal reflects that: “Employees shall remain at the facility unless released by the Agency,” i.e. by an appropriate FAA management official. The Union’s proposal designates specific individuals who may permit a controller to leave the facility grounds while on duty, including a controller working as the Controller-in-Charge (CIC). Controllers are paid to spend all eight hours of their shift at the facility. If for some reason they should be allowed to leave the facility, Agency management should make that determination, not a fellow controller.

E. Overtime

The Parties disagreed on three issues regarding overtime: 1) payment of overtime for Union representatives on “official time;” 2) cancellation of overtime; and 3) guaranteed minimum overtime pay.⁵⁹ The Agency rejected the Union’s proposals on these issues because they would result in increased costs and decreased management flexibility. The Agency’s proposal would allow it to effectively staff its operation and control overtime costs.

1. Overtime for Union “Official Time”

By statute, federal employees who also serve as union representatives may engage in labor relations activities while on duty, i.e. the government pays their salaries while they serve as union representatives. Time spent on such activities is known as “official time.” Today, such activities count toward overtime eligibility. The Union proposes that for overtime purposes, “all hours in a paid status are considered hours of work,” meaning that time spent by a controller serving as a NATCA representative would count towards

⁵⁹ The text of the Agency’s and Union’s proposals is in Article 38, Overtime, located in Appendix A. There is no dispute between the Parties as to the rate of pay controllers receive while working overtime.

the forty hours that trigger the payment of overtime -- even though the representative did no work for or at the request of the Agency.

For example, assume that a controller served as a NATCA representative for eight hours on Monday during his work week and spent the other thirty-two hours of the week controlling air traffic. If the Agency needed him to come into work on Saturday, he would be paid overtime for that day because he already "worked" forty hours that week, even though eight of those hours were consumed by union duties that the Agency has no control over.

The Agency proposed that for overtime purposes, "all hours in a paid leave status are considered hours of work," thereby excluding official time from the definition. This is consistent with the generous civil service norm of counting all time on paid leave (sick leave, annual leave, etc.) towards the forty hour requirement.

2. Cancellation of Overtime

The Union has proposed keeping a restrictive work rule that prevents the Agency from canceling scheduled overtime in most circumstances unless there is a minimum of a full week's notice.

The Agency's proposal reserves its right to cancel overtime without adhering to an arbitrarily long notice provision. Precisely because of the "24/7" nature of air traffic operations, the current provision has been the subject of constant NATCA grievances. For example, assume a controller is attending an all-day training session next week and the Agency called in another controller on overtime to cover his shift. If the first controller's training session is cancelled the day before, the Agency cannot the cancel the second controller's overtime, resulting in the Agency paying for two controllers (one at the time and a half overtime rate) when only one is needed operationally. The Union's proposal increases the Agency's costs and decreases the Agency's flexibility in managing its resources.

3. Guaranteed Minimum Overtime Pay

The Union proposed guaranteeing a minimum amount of overtime pay for controllers who work before or after their scheduled shift or are called in to work overtime on their regular day off. For controllers who work overtime before or after their shift, the Union's proposal guarantees three hours of pay at the controller's regular rate of pay (equivalent to two hours of overtime at time and a half). For a controller who works overtime on his regular day off, the Union's proposal guarantees twelve hours of pay at his regular rate of pay (equivalent to eight hours of overtime at time and a half).

The Agency does not support the idea of a guaranteed minimum for controllers who are called to work overtime just before or just after their regular shift. The Agency will pay the controller for the actual amount of work performed at the appropriate overtime rate. For controllers called in to work overtime on their regular day off, the Agency proposed

guaranteeing at least two hours of work in recognition of the inconvenience caused to the controller by working on his day off. The Agency's proposal ensures that controllers are only paid overtime for the time they are actually needed to work.

F. Dress Code

The Parties could not reach agreement regarding dress code for controllers.⁶⁰ The Agency's Personnel Management System requires that all employees, "[m]aintain a clean and neat personal appearance to the maximum practicable extent during working hours. Employees are expected to dress appropriately in order to reflect the level of professionalism commensurate with their duties and responsibilities."⁶¹ Controllers are the highest-paid non-supervisory workforce in the FAA, earning more than engineers, architects, and accountants. They are responsible for a vital aspect of the Agency's safety mission. The Agency believes that the controller workforce should dress in a manner commensurate with their high pay levels and important duties and responsibilities of their profession.

In the Agency's view, the overall appearance of the controller workforce has deteriorated significantly in recent years. Under the current agreement, controllers regularly come to work in exercise clothes, shorts, tank tops, and flip-flop sandals. Many Agency facilities frequently have visitors from the public and private sectors, such as the FAA's customers in the aviation industry, as well as private contractors who routinely perform work there. The appearance of the controller workforce is vital to the perception these non-FAA visitors have of the controllers and the overall confidence they have in the Agency to carry out its mission.

The Agency has proposed that controllers adopt a "business casual" mode of attire for the workplace in order not to "erode public confidence in the bargaining unit workforce or detract from the professional image of Agency employees." The Agency prescribed in its proposal what it deems to be acceptable and unacceptable attire. The Union proposed maintaining the *status quo* with an exception that allows the Agency to suspend the wearing of "shorts, skorts, culottes, tee shirts, jersey sweat pants/suits, and workout clothing when dignitaries are scheduled to visit the facility, provided that employees receive 48-hour notice."

The Union's proposal is not acceptable to the Agency. It excuses almost all manner of inappropriate attire unless "dignitaries" are present at a facility. The Agency cannot always give forty-eight hours notice that a "dignitary" will be visiting a facility. A Member of Congress or local official may decide to visit a facility with only a few hours notice. (Oddly, during negotiations over this provision, the Union expressly stated that FAA and Department of Transportation employees would not be considered "dignitaries," even

⁶⁰ The text of the Agency's and Union's proposals is in Article 69, Dress Code, located in Appendix A.

⁶¹ FAA Human Resource Policy Manual, ER-4.1, Standards of Conduct.

including the U.S. Secretary of Transportation.) By acknowledging that “dignitaries” should not have to look at people at the top echelon of public service wearing flip flops and tank tops, the Union has more or less admitted the present attire habits are unacceptable.

VII. Other Issues in Dispute Not Part of This Submission

A. Prohibited Subjects of Bargaining

The FAA, like other federal agencies, is prohibited from bargaining over proposals that improperly interfere with the exercise of its reserved management rights. Section 7106(a) of the Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. § 7106(a), delineates management’s rights, which include the right to hire, assign work, discipline employees, and determine the Agency’s budget, organization and mission. Under the FSLMRS, disputes that arise between an agency and a union over whether a particular proposal is non-negotiable, i.e. interferes with the exercise of a management right, are resolved by the Federal Labor Relations Authority (FLRA) through its negotiability appeals process.

During the course of negotiations, the FAA declared a number of NATCA’s proposals to be non-negotiable. NATCA appealed one of the FAA’s declarations of non-negotiability to the FLRA, where the appeal awaits resolution. The proposal under appeal to the FLRA does not involve issues or matters that would be submitted to Congress under 49 U.S.C. §§ 106(l) and 40122(a). The contract article under appeal addresses the creation of a workgroup to study runway incursions. The Union challenged the Agency’s declaration that the entire proposal is non-negotiable.

B. Permissive Subjects of Bargaining

In addition to prohibited subjects of bargaining, there are a number of permissive subjects of bargaining that federal agencies, like the FAA, may bargain over at their election. Section 7106(b)(1) of the FSLMRS, 5 U.S.C. § 7106(b)(1), delineates a number of such subjects, including the numbers, types, and grades of employees or positions assigned to an organizational subdivision, work project, or tour of duty, and the technology, methods, and means of performing work. Proposals that require an agency to waive a statutory right or that do not address working conditions are also considered to be permissive subjects of bargaining by the FLRA, negotiable only at the election of an agency.

During the course of negotiations, NATCA advanced a number of proposals that were deemed to be permissive subjects of bargaining by the FAA. The Parties disagree as to whether one of the Union’s proposals is a permissive or mandatory subject of bargaining. The proposal at issue is not a matter that would be submitted to Congress under 49 U.S.C. §§ 106(l) and 40122(a). The proposal addresses incentive awards for

controllers who receive off-duty flight training that is not required by the FAA. The Agency refused to bargain over the proposal on the basis that it was a permissive subject of bargaining. The Union filed an unfair labor practice charge with the FLRA, which is awaiting resolution.

In addition, as part of its final offer, the Union restored an “evergreen” clause requiring continuation of all contract provisions after the term expires, including all permissive subjects. The Agency’s position is that bargaining to impasse over the request for an “evergreen” clause is improper because such a clause itself is a permissive subject of bargaining.

VIII. Conclusion

The Agency’s proposals are based on the FAA’s need to establish long term affordable pay structures, ensure management control of field operations, and achieve equitable policies for the workforce as a whole. FAA compensation practices must take into account the urgent need to control costs in the current budget environment and Congressional mandates to implement personnel reforms that meet the unique demands of the Agency’s workforce. The Agency’s response to this mandate has been to create a compensation system that features a salary structure in which pay increases reflect organizational and individual performance. NATCA has proposed maintaining the current pay plan which compromises the principles of the performance-based system, reduces management’s flexibility, and substantially increases pay that already is among the highest in the federal government. The cost of the Union’s demands would exceed cost of the FAA’s proposals by approximately \$600 million over a five-year term.

NATCA’s proposals must be viewed within the context of direction given by the Congress for the FAA to implement personnel reform and control costs. The impact on negotiations underway with several other Agency unions involving similar changes to the personnel management system, while not determinative, also must be an important consideration. The FAA commitment to carrying out the Congressional mandate is demonstrated by the position it has taken in these negotiations.

Congress has provided a process to resolve impasses over changes to the Personnel Management System, including compensation and benefits. Under this process such matters must be submitted to Congress before the FAA can proceed to implement its proposed changes. We believe no Congressional action is warranted here.

Attachment
Relevant Statutes

49 U.S.C. § 106. Federal Aviation Administration

(f) Authority of the Secretary and the Administrator.--

(2) Authority of the Administrator.--The Administrator--

(A) is the final authority for carrying out all functions, powers, and duties of the Administration relating to--

(i) the appointment and employment of all officers and employees of the Administration (other than Presidential and political appointees);

(ii) the acquisition and maintenance of property, services, and equipment of the Administration;

(iii) except as otherwise provided in paragraph (3), the promulgation of regulations, rules, orders, circulars, bulletins, and other official publications of the Administration; and

(iv) any obligation imposed on the Administrator, or power conferred on the Administrator, by the Air Traffic Management System Performance Improvement Act of 1996 (or any amendment made by that Act);

(B) shall offer advice and counsel to the President with respect to the appointment and qualifications of any officer or employee of the Administration to be appointed by the President or as a political appointee;

(C) may delegate, and authorize successive redelegations of, to an officer or employee of the Administration any function, power, or duty conferred upon the Administrator, unless such delegation is prohibited by law; and

(D) except as otherwise provided for in this title, and notwithstanding any other provision of law, shall not be required to coordinate, submit for approval or concurrence, or seek the advice or views of the Secretary or any other officer or employee of the Department of Transportation on any matter with respect to which the Administrator is the final authority.

(l) Personnel and services.--

(1) Officers and employees.--Except as provided in subsections (a) and (g) of section 40122, the Administrator is authorized, in the performance of the functions of the Administrator, to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. In fixing compensation and benefits of officers and employees, the Administrator shall not engage in any type of bargaining, except to the extent provided for in section 40122(a), nor shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.

(2) Experts and consultants.--The Administrator is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5.

(3) Transportation and per diem expenses.--The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5.

(4) Use of personnel from other agencies.--The Administrator is authorized to utilize the services of personnel of any other Federal agency (as such term is defined under section 551(1) of title 5).

(5) Voluntary services.--

(A) General rule.--In exercising the authority to accept gifts and voluntary services under section 326 of this title, and without regard to section 1342 of title 31, the Administrator may not accept voluntary and uncompensated services if such services are used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) Incidental expenses.--The Administrator is authorized to provide for incidental expenses, including transportation, lodging, and subsistence, for volunteers who provide voluntary services under this subsection.

(C) Limited treatment as federal employees.--An individual who provides voluntary services under this subsection shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, relating to compensation for work injuries, and chapter 171 of title 28, relating to tort claims.

(6) Contracts.--The Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any Federal agency (as such term is defined in section 551(1) of title 5) or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other governmental entity, or any

person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

49 U.S.C. § 40122. Federal Aviation Administration personnel management system

(a) In general.--

(1) Consultation and negotiation.--In developing and making changes to the personnel management system initially implemented by the Administrator of the Federal Aviation Administration on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the Administration certified under section 7111 of title 5 and consult with other employees of the Administration.

(2) Mediation.--If the Administrator does not reach an agreement under paragraph (1) with the exclusive bargaining representatives, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement. If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Administrator's proposed change to the personnel management system shall not take effect until 60 days have elapsed after the Administrator has transmitted the proposed change, along with the objections of the exclusive bargaining representatives to the change, and the reasons for such objections, to Congress. The 60-day period shall not include any period during which Congress has adjourned sine die.

(3) Cost savings and productivity goals.--The Administration and the exclusive bargaining representatives of the employees shall use every reasonable effort to find cost savings and to increase productivity within each of the affected bargaining units.

(4) Annual budget discussions.--The Administration and the exclusive bargaining representatives of the employees shall meet annually for the purpose of finding additional cost savings within the Administration's annual budget as it applies to each of the affected bargaining units and throughout the agency.

(b) Expert evaluation.--On the date that is 3 years after the personnel management system is implemented, the Administration shall employ outside experts to provide an independent evaluation of the effectiveness of the system within 3 months after such date. For this purpose, the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary.

(c) Pay restriction.--No officer or employee of the Administration may receive an annual rate of basic pay in excess of the annual rate of basic pay payable to the Administrator.

(d) Ethics.--The Administration shall be subject to Executive Order No. 12674 and regulations and opinions promulgated by the Office of Government Ethics, including those set forth in section 2635 of title 5 of the Code of Federal Regulations.

(e) Employee protections.--Until July 1, 1999, basic wages (including locality pay) and operational differential pay provided employees of the Administration shall not be involuntarily adversely affected by reason of the enactment of this section, except for unacceptable performance or by reason of a reduction in force or reorganization or by agreement between the Administration and the affected employees' exclusive bargaining representative.

(f) Labor-management agreements.--Except as otherwise provided by this title, all labor-management agreements covering employees of the Administration that are in effect on the effective date of the Air Traffic Management System Performance Improvement Act of 1996 shall remain in effect until their normal expiration date, unless the Administrator and the exclusive bargaining representative agree to the contrary.

(g) Personnel management system.--

(1) In general.--In consultation with the employees of the Administration and such non-governmental experts in personnel management systems as he may employ, and notwithstanding the provisions of title 5 and other Federal personnel laws, the Administrator shall develop and implement, not later than January 1, 1996, a personnel management system for the Administration that addresses the unique demands on the agency's workforce. Such a new system shall, at a minimum, provide for greater flexibility in the hiring, training, compensation, and location of personnel.

(2) Applicability of title 5.--The provisions of title 5 shall not apply to the new personnel management system developed and implemented pursuant to paragraph (1), with the exception of--

(A) section 2302(b), relating to whistleblower protection, including the provisions for investigation and enforcement as provided in chapter 12 of title 5;

(B) sections 3308-3320, relating to veterans' preference;

(C) chapter 71, relating to labor-management relations;

(D) section 7204, relating to antidiscrimination;

(E) chapter 73, relating to suitability, security, and conduct;

(F) chapter 81, relating to compensation for work injury;

(G) chapters 83-85, 87, and 89, relating to retirement, unemployment compensation, and insurance coverage; and

(H) sections 1204, 1211-1218, 1221, and 7701-7703, relating to the Merit Systems Protection Board.

(3) Appeals to Merit Systems Protection Board.--Under the new personnel management system developed and implemented under paragraph (1), an employee of the Administration may submit an appeal to the Merit Systems Protection Board and may seek judicial review of any resulting final orders or decisions of the Board from any action that was appealable to the Board under any law, rule, or regulation as of March 31, 1996.

(4) Effective date.--This subsection shall take effect on April 1, 1996.

(h) Right to contest adverse personnel actions.--An employee of the Federal Aviation Administration who is the subject of a major adverse personnel action may contest the action either through any contractual grievance procedure that is applicable to the employee as a member of the collective bargaining unit or through the Administration's internal process relating to review of major adverse personnel actions of the Administration, known as Guaranteed Fair Treatment, or under section 40122(g)(3).

(i) Election of forum.--Where a major adverse personnel action may be contested through more than one of the indicated forums (such as the contractual grievance procedure, the Federal Aviation Administration's internal process, or that of the Merit Systems Protection Board), an employee must elect the forum through which the matter will be contested. Nothing in this section is intended to allow an employee to contest an action through more than one forum unless otherwise allowed by law.

(j) Definition.--In this section, the term "major adverse personnel action" means a suspension of more than 14 days, a reduction in pay or grade, a removal for conduct or performance, a nondisciplinary removal, a furlough of 30 days or less (but not including placement in a nonpay status as the result of a lapse of appropriations or an enactment by Congress), or a reduction in force action.