

Reduction In- Force (RIF)
(Army Reserve and Air Force Reserve Only)
by John Esposito

As a result of a change in law to Chapter 1007 of Title 10 USC resulting from enactment of the National Defense Authorization Act 2000 (NDAA 2000) all need to be aware of the following:

This change in law states:

“An individual employed by the Army Reserve or the Air Force Reserve as a non-dual status technician who is ineligible for appointment to a military technician (dual status) position, or who decides not to apply for appointment to such a position, or who, within six months of the date of enactment of this section is not appointed to such position, shall for reduction-in-force purposes be in a separate competitive category from employees who are military technicians (dual status).”

Prior to enactment of this law irrespective of whether an employee was dual status or non-dual status ALL were placed on retention registers within each competitive area strictly according to Tenure, Veteran's preference, length of service and performance.

This change in law has raised the question of whether a Dual status technician can impact a Non-dual status technician or Visa –Versa with regard to Bump and Retreat rights guaranteed employees under the RIF process.

Guidance received recently for Army Reserve personnel, from CPAC, has indicated that it is their interpretation of the law that both categories must be treated entirely separate and neither one can any longer impact each other.

As President of both AFGE Council 164 and Local 1900 I totally disagree with their interpretation and have let my disagreement known to all involved.

First I need to unequivocally state that I totally disagree with the change in law itself and view it to be yet another totally unfair negative

impacting non-dual status technicians many of whom were forced to become non-dual status although totally qualified to be retained in the Selective reserves.

Secondly, I believe the change in law is intended to mean that Dual status Military technicians can in fact Bump and retreat to positions held by non-dual status technicians but that non-dual status are prohibited from in anyway impacting a dual status technician during the RIF process.

Under the current rules of RIF all employees are placed into one of three Tenure Groups as follows:

Group I- Current Career Employees who are not serving a probation period;

Group II- Career Employees serving a probation period, and career conditional employees;

Group III- Term employees, status quo employees, and employees serving under a temporary appointment pending establishment of registers.

Although totally unfair, as I previously stated, I believe that the change in law enacted by Congress is intended to place ALL non-dual status employees in Group-III.

If true, the above would result in Dual Status in group I being entitled to Bump and Retreat (displace an employee in a lower tenure group) to a position held by a Non-dual status technician held in Group III.

If not true, it would mean that Dual status technicians could in fact be eliminated from their job and displaced while non-dual status technicians with fewer years of service/lower ratings are allowed to remain on the job. THIS TO ME DOES NOT EVEN PASS THE COMMON SENSE TEST!!!.

Clearly knowing the feeling of Congress relative to the high standing they place on Dual status as opposed to Non-dual status coupled with the provisions of law that reduces the number of ALL non-dual status authorized by 2007, I simply cannot agree with the CPAC/CPOC interpretation.

As a result of our opposition and strong disagreement with their interpretation this change in law is now pending a legal review and has also been addressed as an issue of concern at the latest USARC Partnership Council meeting for resolution.

My true feeling is that although I know what the Congress intended, I do not believe that as written the law can change anything nor will anyone be able to come up with a legal determination that will not be subject to future challenge.

Unlike enactment of all other laws, DOD has not issued any implementation guidance nor does there exist, to my knowledge, any Congressional Committee or Conference report language accompanying the bill that would express the intent of Congress.

Bottom line is that while I disagree with CPAC/CPOC, I don't believe either interpretation can be implemented until a new provision is written into law that will not be subject to legal challenge. I believe any RIF's which occur, prior to a new law being properly written Must continue to be handled as they have in the past.