

General Joseph Lengyel
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Mr. Bryan Jarrett
Acting Administrator, Wage and Hour Division
U.S. Department of Labor
S-3502, 200 Constitution Ave., NW,
Washington, DC 20210
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By Fax and U.S. Mail,

Dear General Lengyel and Administrator Jarrett:

I write on behalf of Good Jobs Nation, an organization which advocates for federal contract workers, and the over-1000 specialists employed by private contractors on various National Guard Service-Member and Family Programs, including the Family Assistance Center (FAC), ANG Yellow Ribbon Reintegration (YRR), Family Readiness Support Assistance (FRSA), and Recruit Sustainment (RSP) Programs,¹ who have suffered severe and unwarranted wage cuts over the past 18 months.

I write to call upon you to direct your respective agencies to take the urgent actions necessary to systematically halt and reverse the destructive impact of these wage cuts on National Guard Family Programs.

Over the past year dozens of these specialists have contacted us, reporting wage cuts of as much as 55 percent when their contracts were rebid as Service-Contract-Act (SCA) covered contracts beginning in 2016, and their wage rates transitioned from GS-7 or GS-9 equivalencies

¹ We understand RSP is not administered as Family Program: however it has a similar purpose, its personnel have experienced similar wage cuts, and the cuts could be remedied by the same means.

to far-lower SCA rates. The specialists told us of the importance of their work, their dedication to the Guard, its members, veterans, and families, and the financial hardship they experienced as a result of these draconian cuts.

The cuts have forced many specialists – including for instance one third of all FACS – to quit their jobs. Some states have lost nearly all their experienced personnel, and many have struggled to hire and retain qualified staff at wage rates in some instances lower than those payable to federally-contracted janitors.

Overall, we estimate that the transition to SCA rates has slashed Family Program specialists' pay by over \$20 million dollars per year, a small sum in relation to the National Guard's budget, but a massive blow to this small group of dedicated workers – most of whom are themselves veterans or belong to military families.

Good Jobs Nation has supported these workers by filing a complaint under the Service Contract Act currently under investigation by the Austin Texas office of the U.S. Department of Labor's Wage and Hour Division, alleging that the wage determination applied to FAC specialists fails – as mandated by statute - to take “due consideration” of the rates paid to equivalent direct-hire federal employees. We have also connected Family Program specialists with reporters for national and state media, and raised their concerns with Members of Congress and State legislators. We will continue these activities until the current problems are fully addressed.

We have been encouraged by two developments that suggest that your respective agencies are beginning to take appropriate action.

First, on April 10, a representative for DOL Wage and Hour informed YRR specialists that the agency had found merit to their October 2016 complaint alleging that they had been misclassified as Family Readiness Support Services Coordinators, effectively halving their pay,

when their contract was transitioned to SCA, and that DOL had requested NGB and the current contractor to propose a correct job classification and wage rate.

Second, on November 21 2017, FAC Specialists were informed that their pay would be raised to GS-6 equivalency plus the SCA Health and Welfare Benefit, as the result of a modification of the ongoing contract with NGB. For many, this change restored their compensation to near its former level. Unfortunately, this gain proved to be largely temporary. When the contract was awarded to a new vendor in March of this year, the vendor offered the FACS GS-6 wages, without the SCA Health and Welfare benefit (worth about \$8,500 per year).[2]² Furthermore employees were told that the contract was no longer SCA-covered, that they must be on call 24/7 (preventing them from working second jobs to supplement their lower wages), and no longer had the right-of-first-refusal applicable to SCA contracts. Since there has been no material change to the work required, this switch in classification is legally unintelligible. To add to the confusion, the award is currently under protest with the GAO, staying award by 100 days. The effect has been to further demoralize FAC specialists, more of whom have resigned.

Despite the problems noted above, these developments are welcome indications that, first, DOL has begun to find that the job classifications and/or wage rates applied to Family Program specialists following transition to SCA coverage are not reasonable or appropriate; and second NGB is willing to use its contracting authority to provide at least partial relief to one group of affected workers without waiting on the results of DOL's investigations.

But the overall problem caused by the pay cuts remain substantially unremedied. First, we are unaware of any moves to address the cuts to RSP and FRSA workers. The 350 specialists in the Recruit Sustainment Program, who provide vital administrative and counselling support to new recruits and whose program has significantly reduced recruit attrition rates since its inception, have had their pay slashed from GS-7 equivalency to the minimum rates payable

² The incoming contractor does appear to offer a 60% employer contribution to health insurance, but this is of no value to the many specialists who already have health coverage through Tri-Care or their spouse's employer.

under the SCA to “Office Clerk II” – a low-level job classification that does not take account of the complexity, specialized knowledge, and people-management skills of their work. A RSP specialist filed an SCA misclassification complaint in October 2016, but DOL has not yet issued any findings in this case.

Similarly, the 230 Family Readiness Support Assistance Specialists are responsible for both the administrative and people-management tasks involved in coordinating the volunteer Family Readiness Support Groups, who play a vital role in supporting military families through the challenges of Service Member deployment. Their wages, too, were slashed by 25 - 50 percent when their contract was rebid in fall 2016 and they were classified (like the FACs and YRRs) as “Family Readiness Support Services Coordinators.”

Second, the ultimate result and timing of the wage conformance process begun for the YRP remains unknown; while the situation of the FAC workers under the new contract remains unsatisfactory and unclear.

We therefore call on NGB and DOL to work together to take a systematic approach to repairing the damage done to these programs and their workers over the past 18 months.

We ask DOL to expedite its investigation of the FAC and RSP complaints, and if necessary begin investigation of the wage rates paid to FRSA specialists. In approving or recommending any conformance applicable to any of the Family Program workers under the SCA we ask DOL to give decisive consideration to the rates payable to equivalent direct-hire employees, on the ground that these contract employees perform work which involves specialized knowledge of military procedures, programs, and culture, which has no equivalent in the private sector. In fact, the occupational description in DOL’s Directory of Occupations for “Family Readiness and Support Services Coordinator” (FRSSC) is the only occupational description out of some 200 that specifically references the governmental/military nature of the work.

Furthermore a comparison of the SCA wage determination for FRSSC with the other occupations assigned a GS-7 federal wage equivalency in the SCA Index of Occupations shows that FRSSCs are assigned rates far less than those for other GS-7 occupations. By conducting a comprehensive analysis of SCA wage rates payable to all GS-7 equivalent occupations we found the median hourly pay rate issued for the FRSSC occupation (\$14.20) is in fact \$8.33, or 37% lower than the median rate for the median GS-7 equivalent occupation (Personal Computer Support Technician) and the lowest of any rate payable to GS-7 occupations.

Finally, many of these contract workers have exact equivalents in other branches of the NGB, who are direct federal employees and are paid at or above the GS scale paid to the contract workers before the SCA transition. For instance, ARNG Vermont just posted an opening for a Yellow Ribbon specialist at GS-9.

In short, the current FRSSC SCA rates are an unjust and dysfunctional anomaly, and DOL should take this opportunity to address the problems they have caused NGB, and perhaps other military Family Programs, systematically and permanently.

During the time it takes DOL to decide these questions further damage is being done to National Guard Family Programs and their personnel. We therefore call upon the National Guard Bureau to take immediate action to “stop the bleeding.” The NGB should build upon its November 21 initiative by amending all Family Program contracts so as to substantially return wage and total compensation rates to their pre-2016 levels (applying the current for the GS equivalencies), and by incorporating these terms into all future contracts.

In modifying these contracts, the NGB should be aware that, contrary to the assertion made in some of its responses to Congressional inquiries, the NGB, like other federal agencies, is not legally bound to require no more than the minimum

rates currently set by the SCA in its service contracts. We direct NGB's attention to *General Security Services Corporation*, 98-2 Comp. Gen. Proc. Dec. P14, (December 11, 1998), where the GAO approved bid specifications that required bidders to match the wages paid to court security officers under an expiring contract which were higher than the applicable SCA minima, and specifically rejected the protestor's contention that "that the wage rate restriction here ... violate[s]the Service Contract Act (SCA) of 1965, as amended, 41 U.S.C. §§ 351-58 (1994)," noting "The SCA only states, essentially, that agencies must ensure that contractors pay no less than the required locality wage determination rate to listed employees; here, the agency is requiring offerors to pay more than the SCA wage rate, which is not inconsistent with the SCA."

It follows that the NGB may require higher-than-SCA wage rates to be paid on these contracts, while continuing to classify them as SCA contracts. (Thus resolving the anomalous status of the latest FAC contract award.) Taking this measure would offer the quickest and most certain solution to the personnel and service disruptions caused by the wage cuts. Another common sense, and low-cost, step would be to take account of the particular circumstances of Family Program specialists (the frequency with which they have access to non-employer provided health insurance because of their veteran and/or military spouse status) by requiring their employers to provide the SCA Health and Welfare benefit in cash rather than health insurance if so requested by the individual employee.

Finally, having taken these measures, we call upon NGB to reach out to and preferentially rehire the Family Program specialists who have quit jobs that they loved because of the pay cuts.

Thank you for your attention to this urgent matter. I am happy to provide any further information which would be helpful.

Very truly yours,

/s/ George Faraday, Esq.

Legal and Policy Director

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