UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges
WASHINGTON, D.C. 20424-0001

DEPARTMENT OF DEFENSE NATIONAL GUARD BUREAU ARLINGTON, VIRGINIA AND THE ADJUTANT GENERAL OF INDIANA INDIANA AIR NATIONAL GUARD 122ND FIGHTER WING, FORT WAYNE, INDIANA Respondents And ASSOCIATION OF CIVILIAN TECHNICIANS FORT WAYNE CHAPTER, FORT WAYNE, INDIANA Charging Party	Case No. CH-CA-02-0335

NOTICE OF TRANSMITTAL OF DECISION

The above-entitled case having been heard before the undersigned Administrative Law Judge pursuant to the Statute and the Rules and Regulations of the Authority, the undersigned herein serves his/her Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and this case is hereby transferred to the Federal Labor Relations Authority pursuant to 5 C.F.R. § 2423.34(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 5 C.F.R. §§ 2423.40-41, 2429.12, 2429.21-2429.22, 2429.24-2429.25, and 2429.27.

Any such exceptions must be filed on or before **FEBRUARY 10, 2003**, and addressed to:

Office of Case Control
Federal Labor Relations Authority
607 14th Street, N.W., Suite 415
Washington, D.C. 20424

PAUL B. LANG
Administrative Law Judge

Dated: January 10, 2003
Washington, DC

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges

WASHINGTON, D.C. 20424-0001

MEMORANDUM DATE: January 10, 2003

TO: The Federal Labor Relations Authority

FROM: PAUL B. LANG
Administrative Law Judge

SUBJECT: DEPARTMENT OF DEFENSE
NATIONAL GUARD BUREAU
ARLINGTON, VIRGINIA

AND

THE ADJUTANT GENERAL OF INDIANA
INDIANA AIR NATIONAL GUARD
122ND FIGHTER WING
FORT WAYNE, INDIANA

Respondents

And Case No. CH-CA-02-0335

ASSOCIATION OF CIVILIAN TECHNICIANS
FORT WAYNE CHAPTER, FORT WAYNE, INDIANA

Charging Party

Pursuant to section 2423.34(b) of the Rules and Regulations 5 C.F.R. § 2423.34(b), I am hereby transferring the above case to the Authority. Enclosed are copies of my Decision, the service sheet, and the transmittal form sent to the parties. Also enclosed are the transcript, exhibits and any briefs filed by the parties.

Enclosures

FEDERAL LABOR RELATIONS AUTHORITY
Office of Administrative Law Judges OALJ 03-13
WASHINGTON, D.C.

DEPARTMENT OF DEFENSE NATIONAL GUARD BUREAU ARLINGTON, VIRGINIA AND THE ADJUTANT GENERAL OF INDIANA INDIANA AIR NATIONAL GUARD 122ND FIGHTER WING FORT WAYNE, INDIANA Respondents And ASSOCIATION OF CIVILIAN TECHNICIANS FORT WAYNE CHAPTER, FORT WAYNE, INDIANA Charging Party	Case No. CH-CA-02-0335

Patrick L. Stewart, Labor Relations Specialist
For Respondent National Guard Bureau

LTC George C. Thompson, Esquire
A. R. Adamo, Labor Relations Specialist
For Respondent Adjutant General

Neil Haverstock, President ACT, Fort Wayne Chapter
For the Charging Party

Susanne S. Matlin, Esquire
For the General Counsel

Before: PAUL B. LANG
Administrative Law Judge

DECISION

Statement of the Case

This case arises out of an Unfair Labor Practice charge filed on March 25, 2002 by the Association of Civilian Technicians (the Union), against: The Adjutant General of Indiana; (2) Colonel Michael A. James, the United States Property and Fiscal Officer for Indiana; and (3) the National Guard Bureau. On July 26, 2002, the Regional

Director, Chicago Region, of the Federal Labor Relations Authority, issued a Complaint and Notice of Hearing against the Department of Defense, National Guard Bureau, Arlington, Virginia (NGB) and the Adjutant General of Indiana, Indiana Air National Guard, 122nd Fighter Wing, Fort Wayne, Indiana (State Respondent). The Complaint alleged that, pursuant to a directive from NGB, the State Respondent repudiated a portion of the collective bargaining agreement whereby the State Respondent was obligated to furnish seven Battle Dress Uniforms (BDU's), along with name tags, insignia and other accouterments, to each dual-status technician in the bargaining unit and to pay for the sewing of the accouterments onto the BDU's. It was further alleged that, by the above actions, the Respondents committed unfair labor practices in violation of §7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute). Each of the Respondents filed an Answer in which they denied the alleged violations.

A hearing in this matter was held in Indianapolis, Indiana on September 25, 2002. This Decision is based upon consideration of all evidence at the hearing, the demeanor of witnesses, post-hearing briefs of the General Counsel and the State Respondent, and Motions filed by the National Guard Bureau and General Counsel.[1]

National Guard Bureau's Motion to Dismiss

In its motion to dismiss NGB alleges that it is neither a necessary nor a permissive party because it is not in privity of contract with the Union, is not vicariously liable for the actions of the State Respondent and has not taken any action that would render it directly liable to the Union.

NGB's motion to dismiss was originally denied on the grounds that its involvement in the repudiation of the collective bargaining agreement is a question of disputed fact and that, therefore, the Complaint may not be dismissed as a matter of law. In its motion for reconsideration NGB has done no more than resubmit its original motion without a statement of the extraordinary circumstances that would justify reconsideration. Furthermore, evidence was presented at the hearing, as will be described in the Statement of Facts, which supports the proposition that NGB

[1] NGB did not appear at the hearing, but submitted a Motion for Reconsideration of its motion to dismiss which had been denied prior to the hearing. The General Counsel submitted a Motion to Strike a portion of the State Respondent's post-hearing brief.

directed the State Respondent to repudiate the collective bargaining agreement. If the General Counsel prevails on this issue NGB will be found to have committed an unfair labor practice as alleged. The issue of NGB's culpability, if any, can only be resolved after consideration of the evidence and not as a matter of law. In view of the foregoing, the National Guard Bureau's Motion for Reconsideration is Denied.

General Counsel's Motion to Strike Portions of the State Respondent's Post-Hearing Brief

The General Counsel has moved to strike portions of the State Respondent's post-hearing brief which cite the preamble to the collective bargaining agreement[2], the "Bona Fide Needs" Statute, 31 U.S.C. §1502, and two documents, DOD 7000.14-R and Department of Defense Directive 1338.5, both of which are appended to the State Respondent's post-hearing brief as "exhibits." The General Counsel maintains that the State Respondent should be prohibited from relying on the aforesaid items because none of them were cited in the State Respondent's pre-hearing disclosure.

The State Respondent argues that the General Counsel was put on fair notice of its defenses by the pre-hearing disclosure which raised the issue of the illegality of the repudiated portion of the collective bargaining agreement. Counsel for the State Respondent alluded to the preamble to the collective bargaining agreement in his opening statement to which the General Counsel raised no objection. Respondent also maintains that the attachments to its post-hearing brief need not be entered into evidence, but may be cited as legal authorities.

Pursuant to §2423.23(b) and (c) of the Rules and Regulations of the Authority the parties are required to exchange pre-hearing disclosure statements which contain, in addition to lists of proposed witnesses:

> Copies of documents, with an index, proposed to be offered into evidence; and . . . . A brief statement of the theory of the case, including relief sought, and any and all defenses to the allegations in the complaint.

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2 The preamble states that the collective bargaining agreement is, "subject to all currently applicable statutes, regulations issued by the U.S. Office of Personnel Management, Department of Defense, National Guard Bureau or other higher authority".

In its pre-hearing disclosure the State Respondent indicated that its theory of the case was that Paragraphs 32-1 and 32-2 of the collective bargaining agreement were repudiated because their enforcement would be unlawful. The stated reason for this contention was that the repudiated contract language would require the State Respondent to expend federal funds for uniforms in excess of those authorized in Air Force Regulation AFI 36-3014. Furthermore, the purchase of the additional uniforms would violate the so-called Purpose Statute, 31 U.S.C. §1301(a), as well as a collection of laws collectively known as the Anti-Deficiency Acts; the specific statutes were not cited.

During the course of the hearing the General Counsel entered the entire collective bargaining agreement into evidence. The State Respondent's exhibits include the following official documents:

(a) Department of Defense Directive 7200.1 entitled "Administrative Control of Appropriations"

(b) Air Force Instruction 36-3014 entitled "Clothing Allowances for Air Force Personnel"

(c) Chapter 17, entitled "Reserve Forces Procedures", of Air Force Manual 23-110

(d) Chapter 1, entitled "Financial Management in the Air Force", of Air Force Instruction 65-601

(e) A memorandum dated October 11, 2001, from NGB to the Adjutants General of all states, Puerto Rico, the Virgin Islands, Guam and the Commanding General of the District of Columbia.[3] The stated purpose of the memorandum is to provide guidance on uniforms for Army National Guard State Technicians. The memorandum cites regulations governing the issuance of uniforms to Army personnel. There is no mention of their applicability to the Air National Guard.

Each of the State Respondent's Exhibits was entered into evidence without objection.

The purpose of §2423.23 is not to require a detailed recitation of each party's case. All that is required is sufficient notice so as to prevent an unfair surprise. The

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[3] The first page of the memorandum is on a letterhead which identifies NGB as an entity which is subordinate to the Departments of the Army and the Air Force, both of which are under the Department of Defense.

General Counsel does not deny that he was on notice that the State Respondent would be raising the defense of illegality. Both the unfair labor practice charge and the Complaint, in paragraph 12, allude to a memorandum from the State Respondent to the Union dated March 1, 2002, stating that the State Respondent would no longer comply with Paragraphs 32-1 or 32-2 of the collective bargaining agreement because of a letter from the United States Property and Fiscal Officer for Indiana (USPFO). A copy of that letter, dated February 28, 2002, was attached to the memorandum. In the letter the State Respondent was directed to cease the purchase of BDU's because such purchase was held to be a violation of the Anti-Deficiency Act (Purpose Clause) which, according to the letter, prohibits the use of Federally appropriated funds in such a manner.[4] The memorandum and attached letter were placed into evidence by the General Counsel as Exhibits 3 and 4 respectively.

The "Bona Fide Needs" statute, 31 U.S.C. §1502, is contained in Title 31 which is entitled "Money and Finance."[5] It has been cited in the State Respondent's post-hearing brief as part of its previously stated position as to the illegality of the repudiated contract language. Therefore, the State Respondent has not advanced a new theory of its defense. It has merely added additional details to the defense and may properly cite the statute and present argument as to its applicability.

The same analysis applies to the attachments to the State Respondent's Post-Hearing Brief. In its post-hearing brief the State Respondent has correctly relied upon 44 U.S.C. §1501 *et seq.* in support of the proposition that the cited regulations and directives need not be published in the Federal Register and included in the Code of Federal Regulations. In particular, 44 U.S.C. §1505(a)(1) requires the publication in the Federal Register of:

4
The letter states that the State Respondent could not lawfully use Personnel funds or Operations and Maintenance funds to purchase the uniforms.

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The cited section is entitled "Balances available"; it states that an appropriation is available only for expenses properly incurred during the period of availability and is not available for expenditures beyond that period unless otherwise authorized by law. It also states that, "A provision of law requiring that the balance of an appropriation or fund be returned to the general fund of the Treasury at the end of a definite period does not affect the status of lawsuits or rights of action involving the right to an amount payable from the balance."

> Presidential proclamations and Executive orders, except those not having general applicability and legal effect *or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof* . . . . (Emphasis supplied)

The material cited by the State Respondent falls within the statutory exception. Government regulations and directives are secondary legal sources which are commonly cited in legal briefs although not introduced into evidence. Although the State Respondent introduced similar material into evidence at the hearing, it could have relied upon those documents without having done so.

The General Counsel's argument of "trial by ambush" is not persuasive. All of the regulations and directives upon which the State Respondent relies were generally distributed to Air National Guard Units and could have been accessed by the Union if not by the General Counsel. The General Counsel's reliance on *U.S. Dept. of Housing and Urban Development*, 56 FLRA 592 (2000), is similarly misplaced. In that case, a respondent was barred from raising an affirmative defense that was not included in its pre-hearing disclosure. As stated above, the State Respondent has not introduced a new theory of defense, but has merely cited additional authorities in support of the theory that had already been disclosed.

In view of the foregoing, the General Counsel's Motion to Strike is Denied.

Findings of Fact

There is no dispute as to the pertinent facts. On July 20, 2000, the Union and the State Respondent entered into a collective bargaining agreement covering dual status employees who, in addition to their status as civilian employees, are also enlisted members of the State Respondent.[6] Bargaining unit members are required to wear military uniforms both while in civilian and military status.

Paragraph 32-1 of the collective bargaining agreement states:

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[6] Enlistment in the National Guard is a condition of civilian employment.

> Technicians are required by federal statute to wear the military uniform. In doing so, management agrees that uniforms will be provided by the Indiana Air National Guard in the amount of seven (7) sets of Battle Dress Uniforms (BDU) for each dual-status technician. This number of uniforms includes the normal military issue of BDU's for the technician while he/she is serving in the capacity of a traditional Guardsman/ Guardswoman.

Paragraph 32-2 states:

> All nametags, military rank of insignia, and other accouterments shall be provided by the Employer. These insignias, if required to be sewn on the military uniform, shall be paid for by the Employer. (G.C. Exh. 2 at 75).

On February 22, 2002, Colonel Perry M. Collins, the Vice Commander of the State Respondent, received a telephone call from Colonel Michael A. James, the USPFO and a representative of the NGB. James told Collins that the State Respondent should immediately cease issuing BDU's in excess of the number (4 sets) provided for by Air Force regulations.

James testified that he recommended, rather than ordered, that the State Respondent discontinue the issuance of additional uniforms.[7] However, on February 28, 2002, James sent a memorandum to the commander of the State Respondent stating in pertinent part:

- This memorandum confirms in writing my telephonic directive of 22 February 2002. You are directed to immediately cease the purchase of battle dress uniforms using Personnel funds and Operations and Maintenance funds, (EEICs 609 and 61950).

- Use of appropriated funds for these purchases is a violation of the Anti Deficiency Act, (Purpose clause). Despite the language of your collective bargaining agreement (dated May 2001), specifically, Article 32, para. 32-1 and para. 32-2, you cannot expend federally appropriated

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[7] As will be shown below, a determination of the precise relationship between NGB and the State Respondent is not crucial to the disposition of this case.

funds in this manner. (G.C. Exh. 4).

By letter dated March 1, 2002, Collins informed the President of the Union that, in accordance with the directive by the USPFO, a copy of which was attached, the State Respondent could no longer comply with Article 32, paragraphs 32-1 and 32-2 of the collective bargaining agreement. The memorandum further stated that it was being sent to comply with Article 3 of the collective bargaining agreement.[8]

James also testified that his call to Collins had been prompted by a telephone call that he (James) had received from NGB headquarters to the effect that the NGB judge advocate office had expressed concern over the purchase of uniforms beyond the standard allotment in a number of states including Indiana. The representative of NGB headquarters had specifically named the State Respondent. James' oral and written directive to the State Respondent through Collins was issued after James had verified that the State Respondent was issuing additional uniforms.

Discussion and Analysis

The Legality of the Repudiated Contract Language

The thrust of the State Respondent's position is that it is prohibited from complying with the repudiated contract language by virtue of various federal statutes and by regulations and Directives issued by the Department of Defense and the Department of the Air Force which is a component of the Department of Defense. The State Respondent also relies upon the preamble to the collective bargaining agreement which makes its terms subject to such statutes, regulations and directives (see supra note 2). The statutes cited are as follows:

The Bona Fide Need Statute, 31 U.S.C. §1502. The State Respondent argues that there is no bona fide need for members of the bargaining unit to receive uniforms over the amount prescribed by Air Force regulations and that to issue or provide a greater amount would be a violation of the statute. 31 U.S.C. §1502 states, in effect, that an appropriation limited to a particular period of time may only be used to meet expenses properly incurred during such period and may not be used for expenses outside of the

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Article 3 is entitled "IMPACT AND IMPLEMENTATION BARGAINING." It cites §7106(b) of the Statute and establishes a mechanism for bargaining over the impact and implementation of non-negotiable management decisions.

designated period. Significantly, this statute was not cited in the directive from NGB and it is difficult to understand the rationale of the State Respondent's reliance on its language. The State Respondent apparently maintains that it is bad policy to allow Air National Guard members to receive more BDU's than regular active duty Air Force personnel. If that is so, then the State Respondent should not have agreed to the repudiated contract language. In any event, the crucial issue is whether the issuance of additional uniforms is illegal or inconsistent with the preamble to the collective bargaining agreement. The cited statute does nothing to support the State Respondent's position.

The Anti-Deficiency Act, 31 U.S.C. §1341. This statute prohibits an officer or employee of the United States government from making or authorizing an obligation in excess of an amount available in an appropriation for that purpose. The State Respondent argues that, since there is no appropriation or fund available to pay for additional uniforms for National Guard members, the expenditure of funds for such uniforms is unlawful. Assuming that the State Respondent is correct, the statute would only prohibit the expenditure of Federal funds. The issue of the availability of state funds will be discussed below.

The Purpose Statute, 31 U.S.C. §1301. This statute prohibits the use of funds for purposes other than those for which the funds were appropriated "except as otherwise provided by law." It also establishes conditions for the reappropriation and diversion of the unexpended balance of an appropriation. The Purpose Statute supports the contention of the State Respondent that it may not purchase uniforms with unexpended funds which have been appropriated

for other purposes.[9] However, as with the Anti-Deficiency Act, the prohibition applies only to federal funds.

The sum and substance of the regulations and directives cited by the State Respondent is that enlisted Air Force personnel, including members of the Air National Guard, may only be issued four sets of BDU's[10] and that other federal funds may not be used for purchasing uniforms. There is nothing in those documents which would prohibit the use of state funds (or personal funds) for the purchase of additional uniforms and it is difficult to imagine that the intent of those regulations is to interfere with or regulate the relationship between organizations such as the State Respondent and technicians while in a civilian status.

In *National Federation of Federal Employees, Local 1669 and U.S. Department of Defense, Arkansas Air National Guard, 188th Fighter Wing, Fort Smith, Arkansas*, 55 FLRA 63, 65 (1999), the Authority held that proposals related to the wearing of informs by dual status employees while in a civilian status are negotiable. The cited decision, which involved a proposal for the agency to pay for the attachment of insignia to uniforms.[11] Although the issue of funding was not specifically addressed, the decision at

[9] The General Counsel cited *Association of Civilian Technicians, Evergreen and Rainier Chapters and U.S. Department of Defense, National Guard Bureau, Military Department, State of Washington, Camp Murray, Tacoma, Washington*, 57 FLRA 475, 483 (2001), in support of the proposition that the Purpose Statute does not prohibit the use of federal funds for purposes reasonably necessary to promote the mission of the agency. (In that case, it was held that an appropriation for the purchase of uniforms could also be used for cleaning the uniforms.) However, the significance of the cited precedent is limited. The so-called "necessary expense" rule would not allow the State Respondent to ignore the language of specific appropriations so long as the funds in question were spent for the good of the organization. However, funds appropriated for the purchase of uniforms could arguably be used to pay for the sewing on of accouterments.

[10] The parties do not dispute the fact that the initial issue may be replaced as a result of normal wear and tear, a standard that has apparently not been defined.

[11] The State Respondent, perhaps unintentionally, repudiated contract language calling for it to pay for the sewing on of accouterments for all uniforms, whether or not issued in accordance with the collective bargaining agreement.

least stands for the proposition that Federal law does not prohibit the enforcement of the language which was repudiated by the state respondent.

The State Respondent maintains that the allowance of additional uniforms to its dual status technicians would run counter to the intention of the Secretary of the Air Force that members of the Air National Guard be treated the same as active duty and reserve personnel. If that is so, the Secretary's intent also runs counter to the intent of Congress in including dual status technicians within the definition of civilian employees in 5 U.S.C. § 2105(a)(3). The very fact that dual status technicians are afforded rights under the Statute distinguishes them from active duty military personnel who do not have the right to bargain collectively. The collective bargaining agreement between the Union and the Respondent is itself proof of the distinction.

The Availability of State Funds

The State Respondent has failed to advance any argument that the cost of the repudiated contract provisions cannot, as a matter of law, be met by the State of Indiana. Indeed, applicable federal statutes contemplate the use of state funds to help support the National Guard. In 32 U.S.C. §101 (6)(C) the Air National Guard is defined as, ". . . that part of the organized militia of the several States . . . that is organized, armed, and equipped *wholly or partly* at Federal expense" (emphasis supplied). 32 U.S.C. §703 allows states, subject to the approval of the Secretary of the Air Force, to purchase supplies from the Department of the Air Force in addition to other supplies issued to the Air National Guard.12

Just as the employees of the State Respondent are in a dual status, so too is the State Respondent itself as well as other National Guard units. National Guard units may be ordered to active federal duty in accordance with 32 U.S.C. §102. Yet, the Adjutant General of the State of Indiana is appointed by the governor in accordance with state law, Ind.

12
32 U.S.C. §101(13) states that "'Supplies' includes material, equipment, and stores of all kinds." There is no specific definition of "uniforms."

Code Ann., Art. 12,§3 (1999).[13] Officers in the State Respondent are commissioned by the governor who is, *ex officio*, the commander in chief, Ind. Code Ann. 10-2-3-4 (2001).

The fact that Indiana law contemplates the use of state funds for the National Guard is illustrated by the provisions of the Ind. Code Ann. 10-2-2-7(h)(2001) which provides that, "The adjutant-general shall issue such military and naval property as the governor shall direct and under direction of the governor make purchases for that purpose."[14]

The Action of the State Respondent

For the reasons set forth above, the State Respondent was not precluded by law from continuing to meet its obligations under the repudiated portion of the collective bargaining agreement. Therefore, its repudiation of Paragraphs 32-1 and 32-2 was an unfair labor practice in violation of §7116(a)(1) and (5) of the Statute.

The action of the State Respondent was a result of advice or an order from the USPFO with which it understandably felt compelled to comply. However, the State Respondent is also charged with knowledge of its legal obligations. Therefore, while the State Respondent might have been excused for its initial action in repudiating a portion of the contract, it should have eventually concluded that it was not prohibited by law from continuing to issue the additional uniforms.

The Role of NGB

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[13] On page 6 of its post-hearing brief the State Respondent characterizes Adjutant Generals as state officials. The State Respondent filed its answer to the complaint on the letterhead of the State of Indiana Military Department, Office of the Adjutant General; the letterhead includes the Seal of the State of Indiana.

[14] Colonel James, the USPFO, testified that the state provides money for the National Guard to "support their operations." Such expenditures include funds used to provide and maintain armories and to "support the soldiers." According to Colonel James the State of Indiana does not pay for equipment issued to individual National Guard members. However, there appears to be no reason why it could not lawfully do so.

NGB has denied that it is in a command relationship with the State Respondent. While that assertion may be technically correct, the evidence indicates that the State Respondent felt compelled to abide by "advice" from NGB and that NGB was aware of the extent of its influence. Colonel James testified that he was appointed to his current position as USPFO by the NGB. His duty is to ensure that federal funds allotted to the Indiana National Guard (consisting of both Army and Air Force components) are properly allocated and spent. He is also accountable for federal property provided to the Indiana National Guard by the Department of Defense. Colonel James further testified that during the latter part of February of 2002 he called Colonel Collins and "told him to cease and desist this buying of additional uniforms." Colonel James immediately retracted his testimony by stating that he recommended that the purchase of additional uniforms be discontinued. However, his memorandum of February 28, 2002, to the State Respondent was couched in the language of a directive. The language of the State Respondent's memorandum of March 1, 2002, to the Union states that it had been "directed" by the USPFO to immediately cease the purchase of BDU's from Personnel funds and Operations and Maintenance funds.

My finding of NGB's involvement in the State Respondent's repudiation of a portion of the collective bargaining agreement does not arise out of a mistaken choice of words by the USPFO. Even if Colonel James' memorandum had been worded in terms of advice rather than as a directive, the nature of the authority which he had been given by NGB was such that the State Respondent would have felt compelled to comply.

Regardless of whether the memorandum from the USPFO, on behalf of the NGB, to the State Respondent is considered to be an order or advice, NGB substantially interfered with the bargaining relationship between the Union and the State Respondent by causing the State Respondent to repudiate a portion of the collective bargaining agreement. *U.S. Department of Defense, National Guard Bureau, Alexandria, Virginia and Oregon Military Department, Oregon National Guard, Salem, Oregon*, 47 FLRA 1213, 1219 (1993). In so doing NGB committed an unfair labor practice in violation of §7116(a)(1) and (5) of the Statute.

For the reasons set forth above, I find that the State Respondent violated §7116(a)(1) and (5) of the Statute by repudiating the collective bargaining agreement requiring the issuance of additional sets of BDU's and the payment for the sewing on of accouterments. I further find that the NGB violated §7116(a)(1) and (5) of the Statute by giving the

State Respondent directions or advice which caused it to violate the Statute.

Accordingly, I recommend that the Authority adopt the following Order:

ORDER

Pursuant to §2423.41(c) of the Rules and Regulations of the Authority and §7118 of the Federal Service Labor-Management Relations Statute, it is hereby ordered that:

A. The Adjutant General of Indiana, Indiana Air National Guard, 122nd Fighter Wing, Fort Wayne, Indiana, shall:

· Cease and desist from:

(a) Failing and refusing to comply with Paragraphs 32-1 and 32-2 of the collective bargaining agreement with the Association of Civilian Technicians, Fort Wayne Chapter, Fort Wayne, Indiana with respect to the issuance of additional Battle Dress Uniforms and paying for the sewing of accouterments onto the uniforms.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

· Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Comply with Paragraphs 32-1 and 32-2 of the collective bargaining agreement.

(b) Make whole any bargaining unit employee who paid to have accouterments sewn onto their uniforms because of the repudiation of Paragraph 32-2.

(c) Post at its facilities, at locations where bargaining unit employees are assigned, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Air Commander, Indiana Air National Guard, 122nd Fighter Wing, Fort Wayne, Indiana and shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted.

Reasonable steps shall be taken to ensure that such Notices are not altered, defaced or covered by other material.

(d) Cooperate with the Department of Defense, National Guard Bureau, Arlington, Virginia with regard to the posting of the Notice from the National Guard Bureau in accordance with this Order.

(e) Pursuant to §2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director, Chicago Region, Federal Labor Relations Authority, in writing within 30 days of the date of this Order, as to what steps have been taken to comply.

B. The Department of Defense, National Guard Bureau, Arlington, Virginia, shall:

1. Cease and desist from:

(a) Interfering with the collective bargaining relationship between the Association of Civilian Technicians, Fort Wayne Chapter and the Adjutant General of Indiana, Indiana Air National Guard, 122nd Fighter Wing, Fort Wayne, Indiana by directing or advising the Adjutant General to repudiate or refuse to comply with contractual obligations under the collective bargaining agreement or the Statute.

(b) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute:

(a) Post or cause to be posted at the facilities of the Indiana Air National Guard where bargaining unit employees are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms they shall be signed by the Chief of the National Guard Bureau and shall be posted and maintained for 60 consecutive days thereafter in conspicuous places including bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that such Notices are not altered, defaced, or covered by other material.

(b) Pursuant to §2423.41(e) of the Rules and Regulations of the Authority, notify the Regional Director,

Chicago Region, Federal Labor Relations Authority, in writing within 30 days from the date of this Order, as to what steps have been taken to comply.

Issued, Washington, DC, January 10, 2003.

PAUL B. LANG
Administrative Law Judge

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Adjutant General of Indiana, Indiana Air National Guard, 122nd Fighter Wing, Fort Wayne, Indiana, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT, fail or refuse to honor our collective bargaining agreement with the Association of Civilian Technicians, Fort Wayne Chapter, by refusing to comply with Paragraphs 32-1 and 32-2 with regard to the issuance of Battle Dress Uniforms to bargaining unit employees while in the performance of their civilian duties or by refusing to pay for the sewing of required accouterments onto those uniforms.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL reimburse bargaining unit employees who were required to pay for the sewing of accouterments onto their Battle Dress Uniforms as a result of our failure to comply with Paragraph 32-2 of the collective bargaining agreement.

_____
(Respondent/Activity)

Date:_____By:_____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or

compliance with its provisions, they may communicate directly with the Regional Director, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 W. Monroe, Suite 1150, Chicago, IL 60603, and whose telephone number is: (312)353-6306.

NOTICE TO ALL EMPLOYEES

POSTED BY ORDER OF THE

FEDERAL LABOR RELATIONS AUTHORITY

The Federal Labor Relations Authority has found that the Department of Defense, National Guard Bureau, Arlington, Virginia, violated the Federal Service Labor-Management Relations Statute, and has ordered us to post and abide by this Notice.

WE HEREBY NOTIFY EMPLOYEES OF THE ADJUTANT GENERAL OF INDIANA, INDIANA AIR NATIONAL GUARD, 122ND FIGHTER WING, FORT WAYNE, INDIANA THAT:

WE WILL NOT, interfere with the collective bargaining relationship between the Association of Civilian Technicians, Fort Wayne Chapter and the Adjutant General of Indiana, Indiana Air National Guard, 122nd Fighter Wing, Fort Wayne, Indiana by directing or advising the Adjutant General to repudiate or refuse to comply with contractual obligations under the collective bargaining agreement or the Federal Service Labor-Management Relations Statute.
WE WILL NOT, any like or related manner, interfere with, restrain, or coerce employees of the Adjutant General in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

_____
(Respondent/Activity)

Date:_____By:_____
(Signature) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with its provisions, they may communicate

directly with the Regional Director, Chicago Regional Office, Federal Labor Relations Authority, whose address is: 55 W. Monroe, Suite 1150, Chicago, IL 60603, and whose telephone number is: (312)353-6306.

CERTIFICATE OF SERVICE

I hereby certify that copies of this **DECISION** issued by PAUL B. LANG, Administrative Law Judge, in Case No. CH-CA-02-0335, were sent to the following parties:

CERTIFIED MAIL: **CERTIFIED NOS:**

Susanne S. Matlin, Esquire
7000-1670-0000-1175-5967
Federal Labor Relations Authority
55 W. Monroe, Suite 1150
Chicago, IL 60603

LTC George C. Thompson, Esquire
7000-1670-0000-1175-5974
A. R. Adamo, Labor Relations Specialist
Military Department of Indiana
2002 S. Holt Road
Indianapolis, IN 46241

Patrick L. Stewart
7000-1670-0000-1175-5981
Labor Relations Specialist
National Guard Bureau, Suite 9100
1411 Jefferson Davis Highway
Arlington, VA 22202

Neil Haverstock, President
7000-1670-0000-1175-5998
ACT, Fort Wayne Chapter
2907 County Road 56
Auburn, IN 46706

_____
CATHERINE L. TURNER, LEGAL TECHNICIAN

DATED: JANUARY 10, 2003
WASHINGTON, DC