

In the Matter of

DEPARTMENT OF THE AIR FORCE  
DAVIS-MONTHAN AIR FORCE BASE  
TUCSON, ARIZONA

and

LOCAL 2924, AMERICAN FEDERATION  
OF GOVERNMENT EMPLOYEES, AFL-CIO

Case No. 11 FSIP 82

ARBITRATOR'S OPINION AND DECISION

Local 2924, American Federation of Government Employees, AFL-CIO (Union) filed a request for assistance with the Federal Service Impasses Panel (Panel) to consider a negotiation impasse under the Federal Service Labor-Management Relations Statute (Statute), 5 U.S.C. § 7119, between it and the Department of the Air Force, Davis-Monthan Air Force Base (AFB), Tucson, Arizona (Employer).

After an investigation of the request for assistance, which arises from bargaining over the impact and implementation of the Employer's decision to require Air Reserve Technicians (ARTs) to wear military uniforms when working in civilian status,<sup>1/</sup> the Panel determined that the issues at impasse should be resolved through mediation-arbitration with the undersigned. The parties were informed that if they were unable to reach a settlement during mediation, I would issue a binding decision resolving the dispute. Accordingly, on October 4, 2011, I conducted a

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<sup>1/</sup> Although ARTs are civilian positions, as a condition of employment, an incumbent must maintain active duty status as a military reservist in the Air Force. As an active duty military reservist, ARTs are required to serve 1 weekend a month and 2 weeks a year in the military reserves. While on military reserve duty, ARTs must wear the military uniform that is provided by the Air Force. Currently, while performing their civilian jobs, the ARTs at Davis-Monthan AFB are not required to wear a military uniform. In August 2007, the Air Force Reserve Command decided to require ARTs to wear their military uniforms while performing their civilian duties.

telephonic mediation-arbitration proceeding with representatives of the parties. Settlement efforts during the mediation phase resolved some, but not all, of the issues. Thereafter, the parties submitted final offers on the remaining issues and supporting written statements of position. In reaching this decision, I have considered the entire record in this matter.

### BACKGROUND

The Employer is an Air Force Air Combat Command installation whose host unit, the 355 Fighter Wing, is primarily responsible for training Air Force pilots and for providing close support and air control to ground forces worldwide. One of its six tenants is the 943<sup>rd</sup> Rescue Group (943 RG), which performs day and night combat rescue missions; searches for, locates and recovers Air Force and other Department of Defense personnel; provides search and rescue support for civilians; and engages in humanitarian and disaster relief operations. The Union represents about 1,100 bargaining unit employees (BUEs) at Davis-Monthan, some 50 to 60 of whom are 943 RG ARTs affected by the Air Force Reserve Command's decision to require them to wear their military uniforms while performing their civilian jobs. The parties' collective bargaining agreement is due to expire in April 2014.

### ISSUES AT IMPASSE

The parties disagree over: (1) the amount of the initial allowance ARTs should receive for wearing their military uniforms in the performance of their duties; (2) whether ARTs should receive an annual allowance for personal grooming and maintenance of military uniforms; (3) whether ARTs should receive 5 minutes at the beginning and end of their shifts, and before and after lunch, to change into or out of their military uniforms; (4) whether ARTs should be allowed to wear a patch on their uniforms that identifies them as civilian employees; and (5) whether any allowance awarded should be pro-rated and paid upon the signing of their agreement.

#### 1. Initial Uniform Allowance

##### a. The Employer's Position

The Employer is offering to provide a "one-time initial stipend of \$225" to each ART "to defray any impact of wearing the military uniform on a daily basis." When they enlist, ARTs are issued eight complete sets of military uniforms: four Airman

Battle Uniforms (ABUs) and four Service Dress Uniforms (Blues). In addition, they receive "belts, boots, buckles, hats, coats, etc." If an ART has not yet received his/her full complement of uniforms, the remainder may be "requested at any time without any personal cost." When the Air Force Reserve Command decided to mandate that ARTs wear their military uniforms while performing civilian duties, it did not change the kind or look of their uniforms. Therefore, when in civilian status, ARTs will be able to dress in the ABUs and Blues they have worn since they enlisted. When a "uniform or part thereof" becomes "unserviceable," ARTs are entitled to an "in-kind replacement" of the uniform on either a whole or an "item-by-item" basis. The in-kind replacement will be handled "as expeditiously as possible utilizing the current established 943<sup>rd</sup> in-kind replacement procedure." Since "ABUs are by far the most frequently worn uniform" and each ABU costs "less than \$80," the \$225 stipend offered by the Employer "is more than sufficient to purchase two more ABUs. Each ART will then have six sets of ABUs and four sets of Dress Blues, a wardrobe sufficient for wear on a full-time basis."

b. The Union's Position

The Union proposes an initial allowance of \$350 to each ART for the purchase of additional uniforms. While it is willing to accept "[i]n-kind replacement . . . thereafter for any uniform that becomes unserviceable," the Employer's suggestion that "only the ABU is required" overlooks the fact that "every office employee (non-industrial worker)" is required "to wear the blue-dress uniform on Monday of every work week." Moreover, ARTs will be required to wear the Blues when they "attend technical schools." Thus, the additional \$125 sought by the Union is in recognition of the fact that the ARTs will have to purchase additional Dress Blues as well as ABUs. Continuing in the same vein, the Union is not satisfied that the Employer's promise to replace uniforms "as expeditiously as possible" guarantees a sufficiently speedy turnaround for uniforms no longer serviceable. Therefore, to ensure that ARTs timely receive their replacements, the Union proposes that the Employer be required to place any "in-kind item on order within two business days of the determination that the uniform has become unserviceable." Finally, the Union seeks a "hold harmless clause" for ARTs who, through no fault of their own, do not have all of their uniforms at times when a full complement is necessary, such as when they are deployed for combat. If ARTs do not have everything they need because a uniform or uniform

item is "on order," the situation "should be excused and/or understood."

#### CONCLUSION

It is undisputed that ARTs are issued a full complement of uniforms (four complete sets of ABUs and four complete sets of Blues) upon entry into the military. Although the record does not substantiate when the military uniforms were provided and the number of complete sets of uniforms that currently are in the possession of each ART, it is undisputed that the Agency has a record of the number and type of uniforms issued to each ART and that additional uniforms may be requested if an ART did not receive the full complement of uniforms.

There is no dispute that ARTs will need additional military uniforms in order to comply with the Agency's requirement that they wear military uniforms while performing their civilian duties. The parties disagree over the number of additional uniforms needed (the Agency proposes two additional ABUs and the Union proposes two additional ABUs and one additional Dress Blue uniform), the components of the uniforms, and the cost of the uniforms. In support of its estimated \$80 cost for an ABU consisting of an ABU coat and an ABU trouser, the Employer relies upon a price list from the All Services Exchange On-line Store. While not providing a source for its pricing, the Union's estimated cost for the ABU top and trouser is about \$7.50 less than that of the Employer and is approximately \$20.75 more than the Employer's estimate when adding the cost of the additional components the Union believes should be included in the price of the ABU.<sup>2/</sup> Based on the Union's figures, the cost of the Dress Blue uniform is approximately \$155 which includes the \$98.50 cost of the Blues light weight jacket.<sup>3/</sup>

In its statement of position, the Agency acknowledges the possibility that the ARTs will wear military uniforms 7 days a week at least once a month. In addition, it is undisputed that ARTs who work in offices will wear Blues at least once a week.

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2/ The Union includes the cost of ABU socks, t-shirts, belt and hat in the cost of the military uniform.

3/ I have included the Union's estimated cost of one Blue long sleeve shirt (the Blue short sleeve shirt is approximately \$3.50 less), one pair of Blue trousers and one men's neck tie (the women's tie tap is \$2.75 less). The Employer did not submit documentation concerning the cost of the Blues.

Accordingly, any combination of two additional ABUs and one additional Blues or three additional ABUs would provide the ARTs with an adequate number of uniforms to be compliant with the new uniform requirement imposed by the Employer. In this regard, \$250 should be sufficient to supplement the number of uniforms and components the ARTs already have in their possession and permit them to meet the requirement to wear military uniforms at least 5 days a week.

There is insufficient evidence to support the Union's argument that in-kind replacement of uniforms has adversely affected the ARTs ability to maintain a full complement of uniforms. Even assuming there were issues with the timeliness of the in-kind replacement process, the additional uniforms should resolve the problem. In this regard, noting the full complement of uniforms is four ABUs and four Blues, the ARTs should have a sufficient number of additional uniforms so that there is no need for a "hold harmless clause" if an ART has a uniform on order when a full complement is required. Accordingly, I find that in-kind replacement of uniforms is the appropriate and most cost-effective method to ensure that ARTs have serviceable uniforms available to them.

## 2. Annual Uniform Allowance

### a. The Employer's Position

The Employer has no counteroffer to the Union's proposal that every January ARTs receive \$150 for personal grooming and maintenance of military uniforms, such as "haircuts, boot shines, daily shaving products, dry cleaning, tee-shirts, socks [and] uniform belts." In this regard, the expenditure of appropriated funds for personal grooming or items already provided is unnecessary and inappropriate. Because ARTs are in active duty Reserve status one weekend of every month they already have military haircuts. Money for boot shines is unwarranted because ARTs are issued "suede boots (which) are not polished." Similarly, dry cleaning is not required because ABUs "are wash and wear." Inasmuch as belts and hats are an integral part of the military uniform, they are provided with the eight sets of uniforms ARTs receive upon enlistment and will be replaced when needed as part of the in-kind replacement procedure. To the extent ARTs seek reimbursement for tee-shirts and related items like socks and other undergarments, they are asking to be treated differently from and better than all other employees who "buy and furnish their own tee-shirts and socks." Moreover, the "savings realized by ARTs no longer having to buy

their own work clothes will more than make up for" any of the expenses addressed in the Union's proposal. For these reasons, the "impact, if any, of the Agency's 2007 decision on grooming expenses is at best *de minimis*."

b. The Union's Position

The Union proposes that ARTs receive \$150 every January for personal grooming and maintenance of military uniforms, which would "include, but not be limited to, haircuts, boot shines, daily shaving products, dry cleaning, tee-shirts, socks, [and] uniform belts." It concedes that "use of appropriated funds for personal expenses is inappropriate," and it acknowledges that currently "all employees buy their own tee-shirts and socks." It argues, nonetheless, that since the Air Force requires undergarments to meet "the military standard," they should be considered part of the uniform. If the Employer is not going to provide these items to ARTs when they enlist and later replace them in-kind, it should cover the expense of their purchase in an annual allowance. The Union also disagrees with the Employer's claim that dry cleaning is irrelevant. Blues worn on Mondays, for instance, need to be dry cleaned and pressed. ABUs may also need to be cleaned when regular washing cannot "get stains or other industrial contaminants removed." Dry cleaning is typically \$2.50 per item, so \$12.50 would cover five items. If every ART were given \$12.50 per month, the total would be \$150 per year. Therefore, on the basis of dry cleaning alone, the allowance requested is "reasonable." It is also justifiable since "[t]he requirement to wear the uniform should have no cost impact on ART employees."

CONCLUSION

It has been determined that using appropriated funds for cleaning services is non-negotiable. See, *United States Department of the Air Force, 4<sup>th</sup> Fighter Wing, Seymour Johnson Air Force Base v. Federal Labor Relations Authority*, No. 10-1299 (D.C. Cir. May 27, 2011). In this regard, the Union's statement of position acknowledges that appropriated funds cannot be used for personal services. Accordingly, I do not have the authority to impose the Union's proposal.

3. Time to Change Into or Out of the Uniform

a. The Employer's Position

The Employer points out that all employees are required to report to work at the start of their shift in the clothing appropriate for their position and/or status. ARTs do not need to be given 5 minutes to change into and out of their civilian clothes before and after lunch to frequent establishments where uniform wear would be inappropriate because there are "well over 100 eating establishments near the base" where that would not be true. Nevertheless, in the "unlikely event that an ART or group of ARTs might need to attend a function during lunch where . . . wear[ing] . . . the uniform would be inappropriate," the Employer proposes the following:

An ART or group of ARTs may request in advance from supervision permission to be allowed up to 5 minutes before and after the approved lunch period to change out of and back into their military uniform for a special occasion, such as a retirement luncheon, if the event is to take place at an establishment where it would be inappropriate for them to wear the military uniform.

b. The Union's Position

According to the Union, ARTs should be allowed time to change out of and back into their military uniforms before and after lunch because their "lunch time is not agency time, and when employees go to off base restricted areas they will be impacted because of the uniform." The Employer's reference to 100 nearby restaurants that welcome the military uniform, and its suggestion that ARTs should lunch at these "prescribed establishments," is an "inappropriate" interference "with the employees' private lives." Currently, civilian ARTs can "go to restricted areas and don't need to change on duty time." Since they will still be civilian employees when in military uniform, they should not be precluded from either going where they have always gone during lunch or from eating where other civilian employees are allowed to eat. Finally, ARTs are not on duty time before and after work hours nor during lunch. Therefore, requiring them to wear their military uniforms "outside of the work place is a violation of 10 U.S.C. § 71, [because] civilians wearing the uniform . . . would be identified as combatants, and could be targeted by a terrorist group."

### CONCLUSION

The cases upon which the Union relies in support of its proposal is misplaced. The cases that specifically require employees to wear uniforms and involve proposals allowing employees to change into and out of their uniforms during the workday, conclude that such proposals violate section 7106(b)(1) of the Statute and, therefore, are non-negotiable unless Management elects to bargain over these matters.

In response to certain concerns raised by the Union involving the ARTs' need to change into and out of their uniforms prior to and after lunch, the Employer's proposal allows an employee to request five minutes before and after lunch to change into and out of uniform. This proposal affords employees the time requested by the Union to change clothes during their work time and preserves their entire lunch period when there are occasions that the military uniform is inappropriate.

#### 4. Patches on Uniforms Identifying ARTs as Civilian Employees

##### a. The Employer's Position

The Employer contends that it has no duty to bargain over the Union's proposal, and takes the position that no patch should be approved. In *American Federation of Government Employees, Local 1869 and United States Department of the Air Force, 315<sup>th</sup> Airlift Wing, Charleston Air Force Base, Charleston, South Carolina*, 63 FLRA 598 (2009) (315<sup>th</sup> Airlift Wing), the Federal Labor Relations Authority (FLRA) confirmed that the Air Force Reserve Command's requirement that ARTs wear the military uniform while working in their civilian capacity involves a method and means of performing work, within the meaning of Section 7106(b)(1) of the Statute. As such, it is negotiable only at the election of the Agency, and the Agency "elects not to negotiate the unauthorized accoutrement of a civilian patch to the authorized military uniform."

##### b. The Union's Position

For status identification reasons, the Union proposes that "above the employee's right pocket while performing their civilian duties, employees will wear a Velcro patch that says civilian. The Employer will have the patch sewed on all uniforms for the BUEs." Although ARTs may occupy the same positions, perform the same duties, and wear the same uniforms



in their civilian and military capacities, "pay, benefits and retirement" differ depending on the status inhabited at any given time. Wearing the patch would allow all who come in contact with ARTs to know they are civilian employees which would, among other things, identify them as "non-combatant civilian[s]" and "would be especially helpful when on TDY orders." The 315<sup>th</sup> Airlift Wing case cited by the Employer does not apply "because the Union is not proposing a different uniform, the Union is proposing a patch which is a negotiable proposal."

#### CONCLUSION

The Authority has determined that a proposal that would change specific components of the military uniform worn in a civilian capacity is non-negotiable as it interferes with the Agency's right to determine the methods and means of performing work. See, *Association of Civilian Technicians and U.S. Department of Defense, National Guard Bureau, Rhode Island National Guard, Providence, Rhode Island*, 38 FLRA 84 (1990). Inasmuch as the Agency has elected not to negotiate over allowing employees to wear a Velcro patch on their military uniforms, I do not have the authority to impose the Union's proposal.

#### 5. Pro-Rating and Payment of Any Allowances Awarded

##### a. The Employer's Position

The Employer proposes that, "(If appropriate) Management agrees to pro-rate the annual stipend amount at the rate of 1/12<sup>th</sup> per month."

##### b. The Union's Position

The Union proposes that uniform allowances be pro-rated and paid for the remainder of the year upon the signing of this agreement.

#### CONCLUSION

In light of my decision regarding an annual uniform allowance, as stated above, it is unnecessary to address this issue.

DECISION AND ORDER

Having carefully considered the arguments and evidence presented in this case, the parties are hereby ordered to resolve their dispute as follows:

1. Initial Uniform Allowance

The parties shall adopt the following modified version of the Employer's proposal:

The Agency will provide a one-time initial stipend of \$250 to each bargaining unit ART to enable the purchase of any combination of additional ABU or Dress Blue uniforms (e.g., two additional ABUs and one additional Blues or three additional ABUs uniforms), over and above the four ABU and four Dress Blue uniforms that were issued to the member upon enlistment. Thereafter, in-kind replacement will be made for any uniform or part thereof that is determined to be unserviceable. The in-kind replacement will be handled as expeditiously as possible utilizing the current established 943rd in-kind replacement procedure.

2. Annual Uniform Allowance

The Union shall withdraw its proposal.

3. Time to Change Into or Out of the Uniform

The parties shall adopt the Employer's proposal:

An ART or group of ARTs may request in advance from supervision permission to be allowed up to 5 minutes duty time before and after the approved lunch period to change out of and back into their military uniform for a special occasion, such as a retirement luncheon, if the event is to take place at an establishment where it would be inappropriate for them to wear the military uniform.

4. Patches on Uniforms Identifying ARTs as Civilian Employees

The Union shall withdraw its proposal.

5. Pro-Rating and Payment of Any Allowances Awarded

The parties shall withdraw their proposals.

A handwritten signature in black ink, appearing to read "Marvin E. Johnson", written over a horizontal line.

Marvin E. Johnson  
Arbitrator

November 23, 2011  
Silver Spring, Maryland