U.S. AIR FORCE ACADEMY

COLORADO SPRINGS, COLORADO

Case No. DE-CA-90383

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1867

Charging Party

Capt. Tabitha Demjan, Esquire

For the Respondent

Nadia Khan, Esquire

For the General Counsel

Before: GARVIN LEE OLIVER

Administrative Law Judge

DECISION

Statement of the Case

The unfair labor practice complaint alleges that the Respondent violated section 7116(a)(1) and (5) of the Federal Service Labor-Management Relations Statute (the Statute), 5 U.S.C. § 7116(a)(1) and (5), on or about February 22, 1999, by implementing a requirement that firefighters wear their standard uniform while on standby duty without completing negotiations with the employees' exclusive representative.

Respondent's answer denied any violation of the Statute. Further, Respondent asserted that it fulfilled its bargaining obligation by negotiating with the American Federation of Government Employees, Local 1867 (AFGE, Local 1867/Union), over the alleged changes and that the Union waived its rights to bargain through inaction.

A hearing was held in Denver, Colorado. The Respondent and the General Counsel were represented by counsel and afforded a full opportunity to be heard, to adduce relevant evidence, and to examine and cross-examine witnesses. Respondent and the General Counsel filed helpful post-hearing briefs.

Based on the entire record, including my observation of the witnesses and their demeanor, I make the following findings of fact, conclusions of law, and recommendations.

Findings of Fact

A. Background

The AFGE, Local 1867, is the exclusive bargaining representative for an appropriate unit of employees at the Respondent U.S. Air Force Academy. The unit includes about 35 civilian firefighters who work alongside an approximately equal number of military firefighters at three fire stations on the Respondent's campus. Each fire station is similarly designed to include an "industrial" area where the fire trucks and fire fighting equipment are stored; a kitchen and dining area for preparing and eating meals; a dormitory or bunk area for sleeping; and a lounge for reading, watching television, or engaging in other leisure pursuits at appropriate times.

By law, firefighters have a 72-hour workweek consisting of three 24-hour shifts. The first eight hours of each shift, from 7:30 a.m. to 4:00 p.m., is "active" duty during which the firefighters must wear their standard uniform; clean the fire station; inspect, clean and repair the station's fire fighting equipment as well as their personal gear; engage in a variety of training exercises; and immediately respond to medical and fire emergencies as they arise. When their active duty period ends at 4:00 p.m., firefighters go on paid "standby" duty for the next 16 hours. While on standby, firefighters must stay close enough to the fire station that they can hear and react at once to announcements over the loud speaker of medical or fire emergencies. Otherwise, they are free to participate in recreational activities; entertain family members or other visitors until 9:00 p.m., when the fire stations are "locked down;" or sleep.[(1)]

B. The Clothing Practice of Firefighters on Standby

Prior to February 22, 1999, the Respondent's regulations required firefighters to wear the standard

fire-retardant uniform while on active duty between 7:30 a.m. and 4:00 p.m., except for weekends and holidays, but did not prescribe what firefighters were to wear while on standby. Since the trousers and the safety toe boots of the standard uniform are stiff and uncomfortable, the firefighters developed the practice, over a period of time, of changing out of their standard uniform at 4:00 p.m., and into the physical fitness clothing that Respondent furnished to them in or before 1995. The physical fitness clothing, a blend of 50% cotton and 50% polyester, consisted of T-shirts, shorts, sweat shirts and warm-up pants, all labeled U.S. Air Force Academy Fire Department. Although the Respondent may have intended those garments to be worn only when the firefighters were engaged in physical exercise, the employees were never so advised. It is undisputed that some of Respondent's management officials, including Deputy Fire Chiefs Ernst Piercy and James Rackl, were aware of and acquiesced in the firefighters' practice of wearing the fitness clothing while on standby duty.(2)

C. Respondent Proposes to Change Established Practice

In September 1998, Respondent proposed to change the established practice of allowing firefighters to wear fitness clothing on standby and instead to require them to wear the same standard uniform both while on active and standby duty. Several firefighters testified that the proposed change in past practice was precipitated by an incident during the summer of 1998 when a firefighter responded to a medical emergency in his fitness shorts and accidentally exposed his private parts to a female victim in the course of rendering assistance to her. Chief Piercy denied that the unfortunate exposure incident had anything to do with his decision to change the practice concerning appropriate apparel to be worn by firefighters while on standby duty. Instead, he testified that the proposed clothing change was initiated as part of the need to make other changes in Respondent's regulations as of February 1999 due to new requirements stated in Occupational Health and Safety Administration (OSHA) regulations. I credit Chief Piercy's testimony in this regard.

Piercy further testified that his reasons for proposing the change were to improve the professional appearance of firefighters when members of the public visited the fire stations; to identify them as firefighters; and to enhance the firefighters' health and safety. As to the first reason, Piercy testified that students from a local community college visited the fire stations regularly to attend classes held there, that visitors to the campus occasionally stopped for directions at the fire stations, that family and friends frequently visited also, and that management wanted the firefighters to present a more uniform and professional appearance during standby duty than they made by wearing a variety of fitness clothing and footwear under the established practice. With regard to the second reason, Piercy noted that firefighters could be more readily identified as such if they were wearing the standard firefighter's uniform and boots than if they were wearing the fitness clothing previously provided to them by management, along with an assortment of footwear ranging from flip-flops and slippers to sneakers and bare feet, even though their fitness clothing displayed various indicia that the wearers were firefighters at the U.S. Air Force Academy.

The main reason that Respondent decided to require the standard uniform to be worn by firefighters during standby periods, however, was for their own protection. As Piercy and Chief Rackl both explained, management was concerned that the fitness clothing, composed of 50% cotton and 50% polyester, did not meet the National Fire Protection Association (NFPA) 1500 and 1975 standard for fire retardant clothing which the applicable Air Force regulations required firefighters to wear.(3) There was also a concern that firefighters could be injured in the industrial areas of the fire stations as a result of wearing inappropriate footwear such as flip-flops rather than the standard protective boots specified in the Air Force instructions.

Accordingly, Chief Piercy revised Respondent's internal instruction governing civilian uniform wear to extend beyond 7:30 a.m.-4:00 p.m. the period when the standard uniform had to be worn by firefighters, and restricted the use of physical fitness clothing only to those periods when firefighters were engaged in physical fitness training. It is undisputed that the effect of the proposed revisions would require a firefighter to wear the standard uniform from the start of active duty at 7:30 a.m. and while on standby until the firefighter went to sleep.(4) Piercy provided a copy of the proposed revision (and a copy of the existing version for comparison) to the Union on September 9, 1998.(5) Union President Banks then asked Shane Jordan, one of Respondent's firefighters who had recently been designated a union steward, to examine the proposed revisions and advise Banks whether they were acceptable to the firefighters. The two men later discussed the matter and Banks asked Jordan to prepare the Union's request to bargain for Banks's signature. The Union's written bargaining request was submitted to Ron Dale, the Respondent's Civilian Personnel Officer at the time, on October 8, 1998.

The parties met at the Union hall in late October, just prior to Halloween, to discuss the proposed changes. Piercy and Dale represented Respondent; Banks and Jordan represented the Union. At the meeting, Piercy explained why the current practice of wearing any clothing and footwear while on standby needed to be changed, raising the professional appearance and safety concerns mentioned above. Jordan responded that a fire station was home to a firefighter, who should be able to get comfortable by changing out of the standard uniform after completing a day's active duty. The parties did not reach an agreement at the meeting, but Dale indicated that he would prepare a draft memorandum of understanding (MOU) for the Union's review. The undated MOU prepared by Dale and sent to the Union specified that sound safety principles required the practice of wearing physical fitness clothing after normal duty hours to be terminated, and that the firefighters could no longer "lounge" in the fire station in any clothing other than their standard fire retardant uniforms and their safety shoes.

The Union responded by preparing and submitting "formal proposals" to Dale and Piercy by memorandum dated November 4, 1998. In addition to stating the position that there was no need to change the current practice, the Union specifically addressed the Respondent's safety concerns by proposing that the firefighters receive 100% cotton physical fitness clothing to be worn by them during down and sleep time (i.e., while on standby), thus complying with OSHA and NFPA safety standards which call for natural-fiber fire retardant material to be worn when responding to an incident. There was no formal response to this Union proposal.(6) However, Dale did send an e-mail message to Union President Banks in mid- December offering to resolve the issue on the basis that the standard uniform would be worn on standby time from 4:00 p.m. to 8:00 p.m. rather than until 10:00 p.m.(7)

On December 30, 1998, Jordan called Piercy and requested a meeting to discuss the issue again. Piercy agreed to meet with Jordan in the Assistant Chief's office of Jordan's fire station.(8) During the meeting, Jordan offered a new proposal that firefighters would not be permitted to wear exercise shorts during standby periods, but could wear sweat pants, T-shirts and tennis shoes. No agreement was reached, and the meeting ended with Jordan promising to send Piercy further proposals or an MOU.(9)

Thereafter, Jordan prepared additional formal proposals in a memo dated January 5, 1999, which was signed by Union President Banks and sent to Dale and Piercy. Specifically, the Union proposed that exercise shorts could only be worn during workouts, and that firefighters who violated such restriction would be subject to disciplinary procedures. On February 9, 1999, Terence Berger replied to the Union's memo on behalf of the Respondent.(10) In his reply Berger characterized the Union's proposal as essentially an offer to

give firefighters the option of wearing the standard uniform or non-fire retardant physical fitness gear during standby time, a proposal which he said was "not an acceptable appropriate arrangement" but conflicted with management's concern for the safety and security of its firefighters. The memo notified the Union of Respondent's intention to implement the new instruction on February 22, 1999, and offered to "consider your written proposals, which legitimately include appropriate arrangements for adversely affected employees, until the implementation date."

Later that day, Banks sent Berger a written response which stated that the Respondent's new policy would violate the parties' agreement that firefighters were free to engage in a number of pursuits during periods of standby; asked that the current policy be maintained until impasse or agreement was reached; stated that the underlying issue was that firefighters should be wearing fire retardant clothing, not when they should be required to wear the standard uniform during the course of a workday; and noted that when firefighters are sleeping and must respond to an emergency, the fire retardant bunker is sufficient protection regardless of what garments they are wearing under the bunker. The memo closed with a request to continue bargaining.

Berger responded for Piercy on February 17 to the Union's memo dated February 9, disagreeing that the new policy would violate the parties' negotiated contract or was being implemented for any reason other than the safety of firefighters; noted that the Union had not proposed appropriate arrangements as requested; and reiterated that the new policy would be implemented on February 22, as previously announced. There were no further communications between the parties, and the revised instruction was issued on February 22. Since that time, the firefighters have been required to wear their standard uniform on active and standby duty except while engaged in physical fitness training or sleep.Discussion and Conclusions

D. The Applicable Law

Before implementing a change in conditions of employment affecting bargaining unit employees, an agency is required to provide the exclusive representative with notice of, and an opportunity to bargain over, those aspects of the change that are within the duty to bargain. *See Federal Bureau of Prisons, Federal Correctional Institution, Bastrop, Texas,* 55 FLRA 848, 852 (1999)(*FCI, Bastrop*); *U.S. Army Corps of Engineers, Memphis District, Memphis, Tennessee*, 53 FLRA 79, 81 (1997). Absent a waiver of bargaining rights, the mutual obligation to bargain must be satisfied before changes in conditions of employment are implemented. *Id.; National Weather Service Employees Organization and U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service,* 37 FLRA 392, 395 (1990).

The nature of the change in conditions of employment that management proposes to make dictates the extent of its duty to bargain. If the change is substantively negotiable, a union may bargain over the actual decision whether the change should be made. *See, e.g., Department of the Navy, Puget Sound Naval Shipyard, Bremerton, Washington*, 35 FLRA 153, 155 (1990). If the decision to change a condition of employment constitutes the exercise of a management right under section 7106 of the Statute, the substance of the decision to make the change is not negotiable, but the agency is nonetheless obligated to bargain over the impact and implementation of that decision if the resulting change will have more than a *de minimis* effect on conditions of employment. *See Department of Health and Human Services, Social Security Administration,* 24 FLRA 403, 407-08 (1986). In such circumstances, an agency which fails to provide adequate prior notice of the change to the affected employees' exclusive representative or rejects the union's timely request for

negotiations pursuant to section 7106(b)(2) and (3) of the Statute will be found to have violated section 7116(a)(1) and (5) of the Statute. *See FCI, Bastrop*, 55 FLRA at 852, and cases cited.

Additionally, where an exclusive representative submits bargaining proposals and the agency refuses to bargain over them based on the assertion that they are not negotiable, the agency acts at its peril if it then implements the proposed change in conditions of employment since a later holding that the proposals were negotiable will result in a finding that the agency's implementation without bargaining over such negotiable proposals violated section 7116(a)(1) and (5) of the Statute. *Id.; see also U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland,* 39 FLRA 258, 262-63 (1991).

E. The Undisputed Matters

In this case, I have found that for five years (and since at least 1996 according to the Respondent), firefighters in the unit exclusively represented by the Union have worn the physical fitness clothing provided for them by the Respondent not only while engaged in physical fitness training but also while on standby duty in and around their respective fire stations after their active duties ended at 4:00 p.m. There is no dispute that responsible management officials including Chiefs Piercy and Rackl, knew of and acquiesced in the firefighters' established practice. Accordingly, it is undisputed and I find that a past practice had been created thereby. *See U.S. Department of Justice, Executive Office for Immigration Review, Board of Immigration Appeals,* 55 FLRA 454, 455-56 (1999); *U.S. Department of Labor, Washington, DC*, 38 FLRA 899, 907-10 (1990). Moreover, it is undisputed and I find that management's decision to require firefighters to wear their standard uniform, including the stiff and uncomfortable trousers and heavy reinforced boots, while on paid standby duty, affected their conditions of employment to more than a *de minimis* extent. Accordingly, the question is whether the Respondent fulfilled its obligation to bargain with the Union in good faith to the extent required by the Statute before implementing the change in conditions of employment.

C. Respondent Failed to Meet its Bargaining Obligation

Respondent started out appropriately by recognizing the need to notify the Union of its intent to change the existing practice and to explain its reasons for doing so. Thus, the Union received from Piercy on September 9, 1998, a copy of the revised policy that Respondent proposed to implement regarding the attire to be worn by firefighters while on standby duty. The Union's subsequent request to bargain dated October 8, 1998, was honored by the Respondent when Piercy and Dale met with Banks and Jordan at the end of October to negotiate over the proposed change. At that meeting, Piercy explained that the primary reason why management had decided that the firefighters should wear the standard uniform on standby was to protect their personal safety by requiring flame retardant clothing in lieu of the 50% polyester (i.e., non-fire retardant) fitness clothing to be in place when they were suddenly called to a fire emergency and had no time to change. Although the parties did not reach an agreement at the October negotiating session and Dale's subsequently prepared draft MOU was declared unacceptable by the Union, the latter was given an opportunity to prepare and submit "formal proposals" on November 4, 1998. Those proposals included one which was designed to address the Respondent's expressed safety concerns by requiring firefighters to use 100% cotton flame retardant physical fitness clothing as a substitute for the non-flame retardant clothing previously furnished to them by Respondent.

In my judgment, this was the point at which Respondent veered off the good-faith bargaining path and was never able to find it again. Thus, as I have previously found, based on credibility and other factors, the Respondent never replied to the foregoing proposal. I agree with Respondent's contention that its decision to discontinue the practice of allowing firefighters to wear the 50% polyester non-flame retardant fitness clothing that could actually expose them to additional danger of burns if worn under the bunker gear during fire emergencies constituted an exercise of management's reserved right under section 7106(a)(1) of the Statute to determine its internal security practices. *See American Federation of Government Employees, Council 214 and U.S. Department of the Air Force, Headquarters, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio*, 53 FLRA 131, 134-35 (1997)(agency's right to determine internal security practices through plan to secure or safeguard agency personnel extends to issues of "personal safety").(11) Accordingly, the Union could not lawfully prevent Respondent from changing the existing practice even if the dangers inherent in it had been allowed to continue for five years and the fabric of the exercise clothing worn by firefighters during standby time had been supplied to them by management.

Nevertheless, as previously noted, the Respondent had an obligation to bargain over the impact and implementation of its decision to change the practice. Stated otherwise, the Union had the right to bargain over "appropriate arrangements" for adversely affected employees. If the Union's proposal for the Respondent to provide 100% cotton exercise clothing to the firefighters constituted such an appropriate arrangement, the Respondent's implementation of its revised policy on February 22, 1999, without bargaining over the proposal would violate section 7116(a)(1) and (5) of the Statute.(12)

The Authority's analytical framework in determining whether a proposal constitutes an appropriate arrangement is set forth in *National Association of Government Employees, Local R14-87 and Kansas Army National Guard*, 21 FLRA 24 (1986). Thus, the Authority first determines whether the proposal is intended to be an "arrangement" for employees adversely affected by the exercise of a management right, that is, whether there are identifiable adverse effects upon unit employees and whether the proposal is narrowly tailored to provide balm only to those hurt by the exercise of management rights. *See National Association of Government Employees, Local R5-184 and U.S. Department of Veterans Affairs Medical Center, Lexington, Kentucky*, 55 FLRA 549, 551 (1999). Second, the Authority determines whether the proposed arrangement is "appropriate" or whether it instead "excessively interferes" with the exercise of management's section 7106 rights. In making that determination, the Authority weighs the competing practical needs of employees and managers to ascertain whether the relief to adversely affected employees from the proposal more than balances the proposal's burden on the exercise of the management right at issue.

I conclude that the proposal in this case was intended to be an arrangement for the adversely affected firefighters even though the Union did not affix those words to it. Thus, it is undisputed that the imposition of a requirement for firefighters to wear their standard uniforms not only during the eight hours of their active duty but also for the remainder of their 24-hour shifts three times per week while on standby duty in and around the fire stations would have more than a *de minimis* adverse effect on their conditions of employment. In this connection, unlike the physical fitness clothing and the informal footwear (such as tennis shoes and flip-flops) that firefighters were accustomed to wearing while on standby for the past five years, the standard uniform consists of bulkier and stiffer shirts and trousers of flame retardant fabrics that restrict movement and cause perspiration, and of heavy safety toe boots which do not allow the feet to breathe. The firefighters not only would be more uncomfortable in such clothing during their standby periods but their ability to engage in a variety of customary leisure activities permitted by the parties' agreement would be restricted at the same time. The Union's proposal to have the Respondent provide the firefighters with 100% cotton physical fitness clothing was intended to ameliorate the discomfort and constrictions of the standard uniform while seeking to

address Respondent's desire to minimize the physical dangers to the firefighters who had been responding to fire emergencies with non-flame retardant clothing under their bunker gear. Such proposal was narrowly tailored to the firefighters who would be directly affected by Respondent's proposed change in policy rather than to the bargaining unit as a whole. Accordingly, I conclude that the Union's proposal was intended as and in fact constituted an "arrangement" for adversely affected employees.

I further conclude that the Union's proposed arrangement was "appropriate" and did not excessively interfere with the exercise of management's right to determine its internal security practices. Thus, except for specifying the fabric content of the physical fitness clothing to be provided to the firefighters, the Union's proposal did not restrict the right of management to insist upon logos and lettering of the type which appeared on the 50% polyester clothing furnished to the firefighters in the past. Such emblems and descriptions would identify the wearers as Respondent's firefighters as unmistakably as the old clothing did. Moreover, nothing in the Union's proposal would restrict management's right to make the 100% cotton clothing as neat-looking and standardized as it chose, or to arrange for the clothing to be laboratory-tested, certified and labeled as flame retardant in order to conform with NFPA 1975's standards if Respondent believed such steps were required.(13) Further, the Union's proposal did not expressly address the matter of footwear to be worn by firefighters during their standby periods. All of these questions could have been discussed and resolved if the Respondent had replied to rather than ignored the Union's proposal submitted on November 4 as an appropriate arrangement designed to address management's legitimate concerns for the safety of its firefighters while minimizing the adverse effects on them of a change in clothing policy. Unfortunately, the Respondent's failure to reply before issuing and implementing the revised policy instruction on February 22, 1999, precluded the parties from completing the bargaining process.(14)

Accordingly, I conclude that the Respondent violated section 7116(a)(1) and (5) of the Statute to the extent set forth above. *See United States Immigration and Naturalization Service, United States Border Patrol, San Diego Sector, San Diego, California*, 43 FLRA 642, 659-61 (1991), *enforced*, 12 F.3d 882, 884 (9th Cir. 1993)(proposal that body armor be worn to minimize impact of heat discomfort on border patrol agents constitutes an appropriate arrangement); *American Federation of Government Employees, AFL-CIO, Local 1625 and Department of the Navy, Naval Air Station, Oceana, Virginia*, 25 FLRA 1028, 1030-31 (1987)(proposal to permit firefighters to wear tee shirts and ball caps with uniform held negotiable).

D. Remedy

As applicable to the foregoing conclusion that Respondent failed to bargain over the impact and implementation of its decision to change the practice of permitting firefighters to wear exercise clothing while on standby duty in violation of section 7116(a)(1) and (5) of the Statute, the General Counsel has requested that a *status quo ante* order should be issued so as to require a return to the pre-existing practice while the parties complete negotiations. Such an order may be justified by applying the criteria set forth in *Federal Correctional Institution,* 8 FLRA 604, 606 (1982)(*FCI).* Applying the *FCI* factors to the circumstances of this case, however, I conclude that a prospective bargaining order will fully effectuate the purposes and policies of the Statute.

More specifically, I find that the Respondent gave timely notice to the Union on September 9, 1998, of its intention to discontinue the existing practice and provided the Union with a draft of the proposed new policy. I further find that the Union made a timely request to bargain on October 8, 1998, and followed up with

written proposals on November 4, 1998 and January 5, 1999. Although the Respondent implemented the new policy on February 22, 1999 without completing negotiations, I conclude that such implementation was not willful. Thus, the Respondent met with the Union's representatives at least twice to explain its reasons for deciding to change the old practice and to discuss the Union's concerns. Dale also sent the Union a draft MOU and e-mails in an effort to resolve the matter, and Berger gave the Union weeks of advance notice concerning the implementation date of the new policy while inviting the Union to submit appropriate arrangement proposals at any time prior to implementation. Notwithstanding my finding that the Respondent never replied to one of the Union's proposals which was negotiable and which the Union never withdrew, Respondent may have misunderstood what was still on the table when the Union's later communications did not repeat or refer to the previously submitted negotiable proposal. Accordingly, I cannot conclude that Respondent's actions were willful. With respect to the fourth factor under *FCI*, I find that being required to wear the standard uniform while on standby duty is a discomfort to the firefighters and inhibits their ability to engage in certain activities as readily as they could have under the old practice. However, I find that such discomfort and inconvenience is outweighed by the fact that the physical fitness clothing worn by firefighters under the old practice was not fire retardant and could have increased the danger of burns or bonding of clothing to the skin if worn beneath their bunkers during a fire emergency. In this regard, I note the undisputed testimony that the outer bunker gear has been known to fail and that non-flame retardant clothing can actually be worse than no clothing at all during a fire emergency. On balance, given the totality of Respondent's conduct and the potential harm to firefighters' safety caused by the ongoing use of 50% polyester fitness clothing, I find that a *status quo ante* remedial order is unwarranted in the circumstances of this case despite the interim discomfort to the firefighters.

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

ORDER

Pursuant to section 2423.41(c) of the Authority's Rules and Regulations and section 7118 of the Federal Service Labor-Management Relations Statute, the U.S. Air Force Academy, Colorado Springs, Colorado, shall:

1. Cease and desist from:

(a) Implementing the decision to discontinue the established practice of permitting firefighters to wear their physical fitness clothing while on standby duty and instead to require them to wear the standard uniform after 4:00 p.m., without completing negotiations with the American Federation of Federal Employees, Local 1867, the exclusive representative of their employees, to the extent required by law.

(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 Statute:

(a) Upon request, bargain with the American Federation of Government Employees, Local 1867 (the Union) over the Union's proposal that the firefighters be provided with 100% cotton clothing to be worn by them while on standby duty in and around the fire stations.

(b) Post at its facilities were bargaining unit employees represented by the American Federation of Government Employees, Local 1867 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 Superintendent of the U.S. Air Force Academy, and they 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 any other material.

(c) Pursuant to section 2423.41(e) of the Authority's Rules and Regulations, notify the Regional Director, Denver Regional Office, 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, May 2, 2000

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GARVIN LEE OLIVER

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 U.S. Air Force Academy, Colorado Springs, Colorado, 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 implement the decision to discontinue the established practice of permitting firefighters to wear their physical fitness clothing while on standby duty and instead to require them to wear the standard uniform after 4:00 p.m., without completing negotiations with the American Federation of Government Employees, Local 1867, the exclusive representative of our employees, to the extent required by law.

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 Statute.

WE WILL, upon request, bargain with the American Federation of Government Employees, Local 1867, over the Union's proposal that the firefighters be provided with 100% cotton clothing to be worn by them while on standby duty in and around the fire stations.

_____

(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, Denver Regional Office, Federal Labor Relations Authority, whose address is: 1244 Speer Boulevard, Suite 100, Denver, Colorado 80204, and whose telephone number is: (303)844-5226.

1. Although most firefighters choose to retire at around 10:00 p.m., they may do so at any time while on standby and are not restricted to the final eight hours of their 24-hour shift.

2. Since the practice evolved over a period of time, Chief Piercy could not be certain whether it began in 1996 or earlier. I credit the more definitive testimony of several witnesses that the practice had been in effect for

five years prior to February 1999. In any event, there is no dispute that the practice had been in effect with management's tacit acceptance for at least several years before being discontinued. Although Chief Rackl testified that he had been unhappy with the firefighters' appearance while on standby duty in the fire stations for some time, he never took action to change the existing practice.

3. Chief Piercy's undisputed testimony is that Department of Defense and Air Force regulations mandate full compliance by civilian firefighters with NFPA standards, specifically those set forth in NFPA 1500 and 1975. Under those standards, any garment worn by firefighters must be flame resistant (or fire retardant, a synonymous term) due to the danger that non-compliant fabrics which are worn under the "bunker" gear (or "personnel protective equipment") during fire emergencies could more easily melt, drip, burn, shrink, or transmit heat more rapidly, bond to the skin, and thus cause burns to the wearer. The NFPA standards also indicate that clothing made from 100% natural fibers or blends that are principally natural fibers (such as cotton or wool) should be selected for this reason.

4. It is also undisputed that each firefighter could decide when and how long to sleep during standby duty, and what--if anything--would be worn while asleep.

5. Union President Darrell Banks testified that Piercy gave him the documents early in October 1998. However, I credit Piercy's testimony that he sent copies to the Union on the same date which appears at the top of the draft revision, in conformity with his standard operating procedure.

6. Piercy testified that while he did not reply in writing to the Union's November 4 proposal that Respondent furnish fire fighters 100% cotton exercise garments as replacements for the half cotton/half polyester physical fitness clothing earlier provided to them, he did respond verbally during one of his chance encounters with Jordan or another Union representative, Larry Combs, which he termed "hallway discussions." However, Piercy never indicated what he said concerning the above-mentioned Union proposal. While Piercy may have referred to the Union's clothing proposal in passing, I credit the testimony of other witnesses that the Respondent never replied thereto. In this regard, I rely on the fact that all other communications between the parties on the issue of what fire fighters should wear while on standby were memorialized in writing up to that point. I note further that the parties also communicated with each other in writing thereafter, again with the exception of a later Union proposal (referred to below) that firefighters would agree to discontinue wearing exercise shorts while on standby.

7. The Union never accepted Dale's offer, and Piercy testified that Dale had not been authorized to make the offer in any event. Rather, Piercy might have considered allowing the firefighters to remove their standard uniforms at 9:00 p.m., when the fire stations were closed to the public for the night, but not any earlier than that.

8. I reject Jordan's account of Piercy's initial comments to the effect that Piercy was not there to bargain with Jordan over the issue of firefighters wearing the standard uniform during standby time even if the Union were to file an unfair labor practice charge. Piercy agreed to meet with Jordan in an effort to resolve the dispute, and therefore it would make no sense for Piercy to foreclose any such possibility at the outset of their meeting.

9. Jordan did not ask Piercy to address the Union's previously submitted proposal concerning the 100% cotton physical fitness clothing, since the Respondent already had that proposal under consideration and had chosen not to respond to it.

10. Berger, the Respondent's Labor Relations Officer, was Dale's supervisor and took over his assignments upon Dale's departure at the end of December for a new position.

11. The right to determine internal security practices extends to agency decisions that employees must use certain kinds of protective clothing and equipment and the circumstances under which such clothing and equipment will be used. *See, e.g., National Association of Government Employees, Local R7-72 and U.S. Department of the Army, Rock Island Arsenal, Rock Island, Illinois*, 42 FLRA 1019, 1031 (1991); *American Federation of Government Employees, AFL-CIO, Local 1411 and Department of the Army, Fort Benjamin Harrison*, 32 FLRA 990, 994 (1988). It also may extend to the requirement that a uniform be worn as a means of identification. *See American Federation of Government Employees, AFL-CIO, National Archives and Record Administration Council of AFGE Locals (Council 1260) and National Archives and Record Administration*, 31 FLRA 878, 880-81 (1988).

12. Respondent's post-hearing brief (p.8, n.4) does not contend either that the parties bargained over the Union's proposal or that the latter in effect withdrew it by submitting additional formal proposals on January 5, 1999, which did not include the one for 100% cotton fitness clothing. Instead, the Respondent argues that the proposal directly interferes with management's right to determine its internal security practices and does not conform to the NFPA 1975 standard which requires third-party testing, certification and labeling of fire clothing.

13. Unlike the Respondent, however, I do not read the portion of NFPA's standards calling for flame-retardant fabrics such as 100% cotton as merely advisory simply because it appears in the appendix rather than the body of the materials which, all parties agree, are to govern the agency's fire-fighting operations.

14. Although the Respondent similarly failed to reply directly to the Union's proposal dated January 5, 1999, that firefighters would not be permitted to wear shorts on standby time (and thus presumably would not be capable of causing a repeat of the unfortunate exposure accident which occurred in the summer of 1998 during a response to a medical emergency), I conclude that the Respondent correctly described such proposal as an inappropriate arrangement. Thus, unlike the 100% cotton clothing proposal, the Union's January 5 proposal would not address any of the Respondent's expressed concerns for the safety, identification and appearance of its fire fighting personnel. Rather, it would perpetuate all of those concerns while addressing what the Union mistakenly believed to be the impetus behind Piercy's proposal to revise the established practice notwithstanding Respondent's explanation to the Union in late October 1998 of the real reasons behind that decision.