UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

THE ADJUTANT GENERAL MASSACHUSETTS NATIONAL GUARD (BOSTON, MASSACHUSETTS) Respondent	
and	Case No. 1-CA-80328
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, SEIU, AFL-CIO Charging Party	

Mark P. Murray, Esquire
Lt. Colonel Robert A. Bonneau
For the Respondent

Mr. Charles Thomas Cuneo
For the Charging Party

Gerard M. Greene, Esquire
Richard D. Zaiger, Esquire - On Brief
For the General Counsel

BEFORE: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. §7101, et seq.,[1/] and the Final

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1/ For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, e.g., section 7116(a)(5) will be referred to, simply, as "§ 16(a)(5)".

Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., involves impact and implementation bargaining following Respondent's prohibition of the wear of Class X uniforms, previously authorized for dirty work, and concerns whether Respondent unlawfully refused to bargain on Union Proposals 1, 4 and 6[2/] as to which Respondent declined to bargain because, as it informed the Union: Proposal 1 was already complied with, i.e., "The Massachusetts Army National Guard provides military uniforms, coveralls as authorized, and safety items as required." (Joint Exh. 9, p. 2); and Proposals 4 and 6 were non-negotiable pursuant to 26 FLRA No. 62 [26 FLRA 515, 525-526 (1987)] and 26 FLRA No. 84 [26 FLRA 682, 683-684, 684-687 (1987)] (Joint Exh. 9, p. 2).

This case was initiated by a charge filed on June 20, 1988 (G.C. Exh. 1-A). The Complaint and Notice of Hearing issued on August 29, 1988 (G.C. Exh. 1-C) and set the hearing for October 5, 1988, pursuant to which, a hearing was duly held on October 5, 1988, in Boston, Massachusetts before the undersigned.

All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument, which each party waived. At the close of the hearing, November 7, 1988, was fixed as the date for mailing post-hearing briefs, which time was subsequently extended, for good cause shown, to November 21, 1988. Respondent and General Counsel each timely mailed a brief, received on, or before, November 22, 1988, which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

FINDINGS

1. The National Association of Government Employees, SEIU, AFL-CIO (hereinafter referred to as the "Union") is the recognized exclusive representative of Wage Grade and General Schedule Technicians of the Massachusetts Army National Guard (hereinafter referred to as "Respondent"), excluding all professional employees, management officials, supervisors, and employees described in § 12(b)(2), (3), (4), (6) and (7) of the Statute.

2/ Union Proposals 2, 3, 5 and 7 (Joint Exh. 8) are not at issue in this case (Tr. 14).

2. Since at least 1984 (Joint Exh. 2), and considerably earlier according to Mr. Charles Thomas Cuneo, President of Local R1-154 of the Union (Tr. 17, 22), Respondent had authorized bargaining unit employees to wear Class X uniforms in their immediate work areas when engaged in work that requires handling or using materials that cause permanent stains to work clothes (Joint Exh. 2). Indeed, the Battle Dress Uniform (BDU), formerly fatigue uniform, was not to be ". . . worn when performing work which would permanently soil or damage this uniform with grease, oil, paint, solvents, etc." (Joint Exh. 1).

3. Class X clothing consists of ". . . a blouse and a pair of pants, of uniforms that had been turned in . . . and they're marked, stenciled on the back of the shirt, Class X, and somewhere on the pants, they're stenciled Class X." (Tr. 19). (Presumably, the "blouse" or "shirt" and pants refer to the fatigue, or BDU, uniform.) Military insignia, name tags and grade insignia were not worn on Class X uniforms (Tr. 19; Joint Exh. 2).

4. Mr. Cuneo testified without contradiction that, ". . . most maintenance people wore Class X clothing . . . just about anybody involved in dirty, greasy work wore Class X clothing." (Tr. 19-20). Mr. Cuneo cited as examples of locations where Class X clothing was worn: the Combined Support Maintenance Shop (CSMS) at Fort Devens; Unit Training Equipment Site (UTES) at Otis Air Force Base, and the Organizational Maintenance Shops (OMS) (Tr. 20-21).

5. On March 22, 1988, Respondent gave Mr. Cuneo a draft copy of an undated information bulletin (Joint Exh. 3; Tr. 7, 21) which stated, in part, as follows:

> "2. The Adjutant General has determined that wear of Class X clothing is <u>not</u> appropriate military attire for the performance of Technician duties in the Massachusetts Army National Guard. Effective immediately upon receipt of this bulletin, wear of Class X clothing is no longer authorized.
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> "3. Military Technicians performing work which could permanently soil or damage a military uniform with grease, oil, paint, solvents, etc. will wear coveralls authorized by CTA 50-900 to protect the military uniform from damage

or from being permanently stained." (Joint Exh. 3).

6. Sometime before March 22, 1988,[3/] there had been a change in policy whereby BDUs could no longer be turned in for replacement if they were, ". . . soiled with paint, oil, grease, anything that was a permanent stain." (Tr. 23, 25) and Respondent told the Union that, ". . . any BDU uniform that was permanently stained would no longer be allowed to be turned in, the employee would have to assume the cost of replacing it." (Tr. 25). The cost of replacing a BDU is about $27.00, plus an additional $7.00 to $9.00 to have name tags and insignia sewn on (Tr. 26).

7. Initially, the Union sought to negotiate the decision prohibiting the wear of Class X clothing, because of the economic impact (Joint Exhs. 4 and 6), but when Respondent refused, because, as the Authority had held, the wear of the prescribed uniform is a method and means of performing work within the meaning of § 6(b)(1) of the Statute (Joint Exhs. 5 and 7), the Union eventually, at Respondent's invitation, submitted impact and implementation proposals in its letter dated April 22, 1988 (Joint Exh. 8). Proposals 1, 4 and 6, which, as noted above, are the only matters at issue, were as follows:

> "1. The Massachusetts National Guard will furnish all items of clothing that it requires an employee to wear.
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> . . . . .
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> "4. Employees who are exposed to asbestos fibers in the performance of their duties will have their clothing cleaned by the employer.
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> . . . . .
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> "6. Employees who opt to wear the agency supplied coverall will not be required to wear a uniform beneath the coveralls."
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> . . . . ." (Joint Exh. 8).

3/ The date was not established except that it was in 1988 during contract negotiations (Tr. 23-24).

8. Mr. Cuneo stated that employees working on brake shoes and brake drums are exposed to asbestos fibers and ". . . we wanted the agency to provide cleaning for those people engaged in that type of work instead of bringing their clothes home and doing it with the family laundry, possibly contaminating other people." (Tr. 27-28). Mr. Cuneo further testified that: (a) coveralls offered only semi-protection, because ". . . if you work with a liquid . . . its going to get down to your skin, so still, in fact, you're going to soil the BDU. . . ." (Tr. 25); (b) wearing coveralls over a BDU was cumbersome (Tr. 28); and (c) wearing coveralls over a BDU becomes unbearable in hot weather (Tr. 28).

9. Respondent responded by letter dated May 9, 1988 (Joint Exh. 9) in which it stated, in part, as follows:

> ". . . To begin with, there is no change in the uniform policy as you imply. . . . The second portion of your premise is also invalid in that the need for technicians to purchase replacement uniforms should neither increase nor decrease since military uniforms have been and will continue to be provided . . . Additionally, technicians engaged in work which could permanently soil or damage the prescribed military uniform with grease, oil, paint, solvents, etc. are provided coveralls to protect that uniform from damage beyond the fair wear and tear standards established by the Department of the Army. Wear of the coveralls . . . will preclude soiling or damaging the prescribed military uniform beyond that standard thereby eliminating the need for technicians to replace it. Based on the reasons stated above, terminating wear of Class X clothing should have no economic impact upon technicians.
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> . . . . .
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> "Although your proposals were formulated upon an invalid premise, I have given them due consideration and will address them briefly.

"Proposal 1: The Massachusetts Army National Guard provides military uniforms, coveralls as authorized, and safety items as required.

. . . . .

"Proposals 4, 5 & 6: The Authority has ruled on substantially similar proposals in 26 FLRA 62 and 84.

. . . ." (Joint Exh. 9).

Attached to Respondent's letter of May 9, 1988, and referenced therein, was a Support Personnel Information Bulletin.4/

10. President Cuneo responded by letter dated May 18, 1988 (Joint Exh. 10) and asserted, in part, "Your letter of 9 May 1988 in response to the Union proposals of 22 April 1988, requires additional clarification . . . ." (Joint Exh. 10). Respondent replied by letter dated May 23, 1988, and stated in part, as follows:

"Wear of the military uniform constitutes management's choice of the 'methods and means of performing work' within the meaning of Section 7106 (b) (1) of the Statute and is negotiable only at the election of the agency. There are many different military uniforms which are prescribed to be worn depending upon the nature of the work to be performed. Management's choice of which uniform will be worn, therefore, also constitutes the 'methods and means of performing work' within the meaning of 5 USC 7106 (b) (1) and is also negotiable only at the election of the agency.

"We feel that we have bargained over the impact and the implementation of our decision to discontinue the wear of

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4/ This is the final and revised version of Joint Exhibit 3, to be published on, or about May 15, 1988, to be effective June 1, 1988 (Joint Exh. 9).

Class X clothing by accepting your proposals and by adequately responding to them.

"Should you feel that further clarification . . . is still necessary, please feel free to contact me." (Joint Exh. 11).

11. There was no further contact between the parties and the ban on Class X clothing was implemented June 1, 1988 (Tr. 31; Joint Exh. 9, Attachment, n. 4 supra).

Conclusions

The Authority has established that the requirement that civilian technicians must wear the prescribed military uniform is a method and means of performing work within the meaning of § 6(b)(1) of the Statute. Division of Military and Naval Affairs, State of New York, Albany, New York, 15 FLRA 288 (1984), aff'd sub nom., New York Council, Association of Civilian Technicians v. FLRA, 757 F.2d 502 (2d Cir. 1985), cert. denied, 474 U.S. 846 (1985); American Federation of Government Employees, AFL-CIO, Local 3006, 32 FLRA 539 (1988); Association of Civilian Technicians, Michigan State Council, 32 FLRA 1207 (1988). Accordingly, Respondent was privileged, pursuant to § 6(b)(1) of the Statute, to discontinue the wear of Class X clothing; however, pursuant to § 6(b)(2) and (3) of the Statute, Respondent was obligated to bargain with the Union concerning: "(2) procedures which management . . . will observe . . .; or (3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section. . . ." (§ 6(b)(2) and (3)) [impact and implementation]. Respondent's decision to prohibit the wear of Class X clothing foreseeably had more than a de minimis impact for the reason that wear of the BDU for dirty work, where the BDU previously had been banned (Joint Exh. 2), even if worn under coveralls, could be damaged and each employee could have to bear the cost of its replacement. In addition, it was foreseeable that wearing coveralls over a BDU would be both an encumbrance and uncomfortable.

Indeed, Respondent recognized the Union's right to bargain on the impact and implementation of the change and invited the Union's comments or suggestions on impact and implementation which the Union eventually submitted by its letter of April 22, 1988.

(a) Proposal 1. The Union proposed that Respondent furnish all items of clothing that it requires an employee to wear. Respondent replied, in effect, that it did ("The Massachusetts Army National Guard provides military uniforms, coveralls as authorized, and safety items as required."). Although Mr. Cuneo in the opening paragraph of his letter of April 22, 1988, stated that the Union's proposals were, ". . . predicated on the premise that the new uniform policy will result in technicians being required to purchase replacement clothing. . . .", Proposal No. 1 did not address replacement, as General Counsel asserts (General Counsel's Brief, p. 10), but, rather, furnish, which, as Respondent replied it did. The Union, if it disagreed, did not clarify its Proposal No. 1, or make any alternative proposal.

Additionally, Respondent asserts that the Union's Proposal No. 1 is precluded by Regulations CTA 50-900, "Common Table of Allowances" (Res. Exh. 1) (hereinafter referred to as "CTA"). General Counsel contends: (a) Respondent did not assert the Regulation as a bar to negotiating on Union's Proposal No. 1 prior to the hearing; and (b) Respondent should not be permitted to raise such defense for the first time at the ULP hearing. I disagree with each of General Counsel's assertions. First, Respondent did effectively assert the CTA as the basis for its response to Proposal 1. Thus, its statement that ". . . military uniforms have been and will continue to be provided . . . technicians . . . are provided coveralls to protect that uniform . . .", as well as its statement that it, ". . . provides military uniforms, coveralls as authorized, and safety items as required" (Joint Exh. 9), by direct implication referred to the CTA. The CTA was specifically referred to in response to Union Proposals 2 and 3 in which Respondent stated, "Quantities of uniforms, which the Massachusetts National Guard is authorized to issue, are governed by the Common Table of Allowances established by the Department of the Army." Since Proposals 1, 2 and 3 each dealt with "furnishing" clothing and/or uniforms, even though Respondent did not use the words CTA in its response to Proposal 1, it is clear that its response meant the CTA. Moreover, in the attached Information Bulletin, Respondent specifically stated, ". . . technicians . . . will wear coveralls authorized by CTA 50-900 to protect the military uniform. . . ." (Joint Exh. 9, Attachment, Par. 3) (Of course, a like reference appeared in the draft the Union received on March 22, 1988. Joint Exh. 3). Since Respondent in its response to Proposal 1 had referred to "military uniforms" and to "coveralls" provided, the

Information Bulletin, again, makes it clear that Respondent referenced the CTA in its response to Proposal 1. Accordingly, I conclude that Respondent did assert the CTA as the basis for the non-negotiability of the Union's Proposal 1. Second, while I should like to agree with General Counsel, upon careful reflection I conclude, albeit reluctantly, that § 14(c) of the Statute precludes the barring of the defense, even if not raised until the hearing. To bar the assertion of a Regulation as a defense to a refusal to bargain charge because the Regulation had not been asserted during negotiations would be an act in futility since any agreement would be subject to approval, pursuant to § 14(c)(1), and would be subject to rejection if contrary to ". . . applicable law, rule, or regulation. . . ."[5/] (§ 14(c)(2) Emphasis supplied). In short, "applicable law, rule, or regulation," like jurisdiction, may be raised at any time prior to expiration of the time for review set forth in § 14(c)(2).[6/] Department of the Interior, National Park Service, Colonial National Historical Park, Yorktown, Virginia, 20 FLRA 537 (1985), aff'd sub nom., FLRA v. National Association of Government Employees, Local R4-68, 802 F.2d 1484 (4th Cir. 1986) (hereinafter referred to as "Yorktown"); Department of the Interior, Washington, D.C., et al., 31 FLRA 267 (1988). Indeed, in Yorktown, supra, the Authority stated, inter alia, that, "The only requirement that an agency support its allegation of nonnegotiability with specificity and rationale occurs after the agency has been served with a petition for

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5/ An order to bargain without consideration of an asserted Regulation would not constitute the grant of an exception by the agency.

6/ Moreover, even if an agreement has become effective because not disapproved within the applicable time period (§ 14(c)(2) or 14 (c)(4)), ". . . if the agreement provisions are found to be violative of the Statute or any other applicable law, rule or regulation, they would be void and unenforceable." National Treasury Employees Union, Chapter 52, 23 FLRA 720, 722 (1986). However, while an unlawful practice may be corrected, i.e., stopped, there is, nevertheless, an obligation to give notice of the change and, upon request, bargain, ". . . to the extent consonant with law and regulation, concerning the impact of such required change and, where possible, concerning the implementation thereof." Department of the Interior, U.S. Geological Survey, Conservation Division, Gulf of Mexico Region, Metairie, Louisiana, 9 FLRA 543, 546 n. 9 (1982).

review, at which time the agency has 30 days . . . to file a statement . . . specifying its reasons. . . ." (20 FLRA at 541). The Fourth Circuit Court of Appeals agreed, 802 F.2d at 1485.

General Counsel's assertion, that Respondent's letter of May 9 (Joint Exh. 9), ". . . could be construed as a counter-proposal affirming the status quo" (General Counsel's Brief, p. 11), is not otherwise explained and the meaning of the reference to "status quo" is unclear. The record demonstrated that the Union well understood the distinction between furnishing clothing and the turning in of clothing for replacement (Tr. 23, 25). Not only did Proposal 1 not address replacement but the statement by Respondent in its letter of May 9,[7/] that,

> ". . . technicians . . . are provided coveralls to protect that uniform from damage beyond the fair wear and tear standards established by the Department of the Army. Wear of the coveralls . . . will preclude soiling or damaging the prescribed military uniform beyond that standard thereby eliminating the need . . . to replace it. . . ." (Joint Exh. 9),

appears to advance the proposition that if coveralls are worn, any soiling of, or damage to, the uniform will constitute fair wear and tear; but the Union neither reacted to Respondent's statement nor made any proposal, or counterproposal, concerning replacement, fair wear and tear standard, etc.

Accordingly, I find that Respondent did not violate § 16(a)(5) or (1) of the Statute by refusing to bargain on Union Proposal 1.

(b) Proposal 4. The Union proposal that, "Employees who are exposed to asbestos fibers in the performance of their duties will have their clothing cleaned by the employer." Respondent stated, "The Authority has ruled on substantially similar proposals in 26 FLRA 62 and 84." National Association of Government Employees, SEIU, AFL-CIO and National Guard Bureau, Adjutant General, (National Guard

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7/ This is the only position of the May 9, 1988, letter that might be construed as a counterproposal.

Bureau), 26 FLRA No. 62, 26 FLRA 515 (1987) (Proposal 9) consisted of a proposal that "Technicians will be furnished an allowance for cleaning and maintenance. . . ." and Association of Civilian Technicians, Wisconsin Chapter and Wisconsin Army National Guard (Wisconsin Army National Guard); 26 FLRA No. 84, 26 FLRA 682 (1987) (Proposal 1) consisted of a proposal that, technicians be provided, "a. Sewing services for attaching . . . names and other service and unit identifying patches to the uniforms and all other protective gear and cold weather clothing. . . . b. Laundering services of all required military items of clothing required to be worn in the performance of civilian technician duties." As to each proposal the Authority stated,

> "From our examination of these provisions, we conclude that 5 U.S.C. chapter 59, subchapter I, deals comprehensively with the payment of a uniform allowance by an agency for the maintenance of the uniform which the agency requires employees to wear . . . we find that the proposal pertains to a matter which is specifically provided for by Federal statute. Thus, under section 7103(a)(14)(C) of the Statute, the proposal concerns a matter which is excluded from those 'conditions of employment' over which an agency can be required to bargain." (26 FLRA at 526; 26 FLRA at 684).

General Counsel asserts that National Guard Bureau, and Wisconsin Army National Guard, supra, are distinguishable and, therefore, inapplicable, because the Union's Proposal 4 concerns safety and health - exposure to asbestos fibers - whereas safety and health were not involved in either National Guard Bureau, supra, or Wisconsin Army National Guard, supra. In support of his position, General Counsel cites and relies upon: American Federation of Government Employees, AFL-CIO, Local 1928, 2 FLRA 451 (1980) (Local 1928) and Long Beach Naval Shipyard, Long Beach, California, 17 FLRA 511 (1985) (Long Beach). Local 1928, supra, concerned a union proposal that the activity provide safety shoes without charge. A DOD Regulation was raised as a bar to negotiation for the first time in the agency's statement of position. The Authority stated,

> ". . . the agency bears the burden of coming forward with affirmative support

> for its assertion that . . . a compelling need exists for the regulation. . .
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> In this case . . . the agency has submitted no affirmative support . . . upon which the Authority could base a finding that a compelling need exists for the regulation in question to bar negotiations on the Union's proposal (2 FLRA at 454-455).

Of course, 5 U.S.C. Chapter 59 (5 U.S.C. § 5901, et seq.) was neither cited nor relied upon in Local 1928, supra. Nor does Respondent's stated reason, by incorporation of National Guard Bureau, supra, and Wisconsin Army National Guard, supra, involve compelling need for a regulation but, rather, is based foursquare on the fact that the Authority has held that 5 U.S.C. Chapter 59 deals comprehensively with uniform allowances, including cleaning and maintenance, and because the matter, i.e., specifically cleaning, is provided for by Federal statute, pursuant to § 3(a)(14)(C) of the Statute it concerns a matter which is excluded from "conditions of employment" over which an agency can be required to bargain.

Long Beach, supra, involved a change in the type of protective clothing (coveralls) and the Authority held that the,

> ". . . substantive decision concerning the type of protective clothing to be worn . . . is within the Respondent's duty to bargain, noting particularly that the Respondent has provided no support for a finding that the subject matter is outside the duty to bargain because it is inconsistent with Government-wide regulations under section 7117(a)(1) of the Statute . . . Also, the Respondent has not shown that bargaining on such matters would interfere with its right to determine 'the technology' or 'means of performing work' under section 7106(b)(1) of the Statute." (17 FLRA at 513).

Again, here, the proposal involved cleaning of coveralls which the Authority has held involves a matter specifically provided for by statute and, therefore, pursuant to

§ 3(a)(14)(C) concerned a matter which is not a "condition of employment" over which Respondent is required to bargain.

Accordingly, I conclude that the Union's proposal concerned a matter excluded from those "conditions of employment," pursuant to § 3(a)(14)(C) of the Statute, over which Respondent was required to bargain.8/

(c) Proposal 6. The Union proposed that "Employees who opt to wear the agency supplied coverall will not be required to wear a uniform beneath the coveralls." (Joint Exh. 8). Respondent replied (as to Proposals 4, 5 and 6) that "The Authority has ruled on substantially similar proposals in 26 FLRA 62 and 84." National Guard Bureau, supra, [26 FLRA No. 62] is not in point as to Proposal 6, but Wisconsin Army National Guard, supra, [26 FLRA No. 84] (Proposals 4 and 8) is in point. In addition, Respondent relies upon National Guard Technician Program Regulation TPR 300-302.7 and in particular Section 7-6. "Wear of the Military Uniform".9/ The Support Personnel Information Bulletin, attached to Respondent's reply to the Union of May 9, 1988 (Joint Exh. 9) stated, in part, as follows:

8/ Additionally, Respondent, at the hearing, introduced and relied upon National Guard Regulation 750-1 (Res. Exh. 2). For reasons set forth hereinabove (see, also, Local 1928, supra, 2 FLRA at 454-455), reliance on the Regulation is proper even if not asserted until the ULP hearing. Section 3-6 does specifically address limited situations where laundry or dry cleaning services may be provided, none of which apply to the Union or its proposal (Tr. 59). General Counsel has not asserted that there is no compelling need for this Regulation, but rather challenged the right of Respondent to raise the Regulation as a defense, for the first time at the hearing. In view of my decision that the Union's proposal is governed by National Guard Bureau and Wisconsin Army National Guard, as a matter governed by statute and, therefore, excluded as a condition of employment over which Respondent was required to bargain, it is unnecessary to decide whether bargaining was also barred by Res. Exh. 2.

9/ "a. All military technicians will wear the military uniform appropriate for the service branch (ARNG or ANG) of employment and federally recognized grade. Regulations pertaining to grooming standards and wearing of the military uniform (AR 600-9, AR 670-1; AFR 35-10, AFR 35-11) will be complied with." (Res. Exh. 3).

> "1. Military technicians are required to wear the appropriate military uniform with federally recognized grade and all required insignia while performing technician duties. They must also comply with governing directives pertaining to Grooming Standards and Wearing of the Military Uniform (AR 600-9, AR 670-1). The appropriate military uniform is that uniform determined by the supervisor to be suitable for the type of work being performed." (Joint Exh. 9, Attachment)

General Counsel argues,

> ". . . The proposal [Proposal 6], admittedly, exempts employees from wearing the BDU. However this exemption is strictly limited to occasions when employees wear a coverall, and accordingly the extent to which the proposal interferes with the Respondent's exercise of its right to determine the methods and means of performing work is minimal. In fact, it is difficult to see how wear of the BDU under a coverall, where the BDU is concealed, serves any of the objectives recognized by the Authority as distinguishing the National Guard uniform requirement. . . . The Respondent's recent interest in requiring wear of the BDU under such conditions is therefore outweighed by the benefits gained from accommodating employees who otherwise would be encumbered by two layers of uniforms, and in view of the proposal's limited scope, the record supports a finding that the proposal constitutes a negotiable appropriate arrangement." (General Counsel's Brief, pp. 12-13).

As a matter of logic, I quite agree with General Counsel; and, while I, too, see little or no reason to require that a BDU be worn under coveralls, the cases have made it clear that the agency's right to determine the methods and means of performing work, pursuant to § 6(b)(1) of the Statute, includes the right to determine "the prescribed military uniform." Accordingly, I am constrained to conclude that

Respondent had the right to determine that the prescribed military uniform is the BDU under coveralls and, therefore, Union Proposal 6 was negotiable only at the election of Respondent. Wisconsin Army National Guard, supra, 26 FLRA at 686-687.

Having found that Respondent did not violate §§ 16(a)(5) or (1) of the Statute by refusing to negotiate on Union Proposals 1, 4 or 6, I recommend that the Authority adopt the following:

ORDER

The Complaint in Case No. 1-CA-80328 be, and the same is hereby, dismissed.

William B. Devaney

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: May 11, 1989
Washington, D.C.