

UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
WASHINGTON, D.C. 20424-0001

NATIONAL GUARD BUREAU

Respondent

and

NATIONAL FEDERATION OF FEDERAL  
EMPLOYEES

Charging Party

Case No. WA-CA-20859

Wilson E. Fisher, Esq.  
For the Respondent

Daryl Adams, Esq.  
For the General Counsel

Before: SALVATORE J. ARRIGO  
Administrative Law Judge

DECISION

Statement of the Case

This case arose under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the U.S. Code, 5 U.S.C. § 7101, et seq. (herein the Statute).

Upon an unfair labor practice charge having been filed by the captioned Charging Party (herein the Union) against the captioned Respondent, the General Counsel of the Federal Labor Relations Authority (herein the Authority), by the Regional Director for the Washington Regional Office, issued a Complaint and Notice of Hearing alleging Respondent violated section 7116(a)(1) and (6) of the Statute by refusing to adopt and implement a decision of the Federal Service Impasses Panel concerning the authorization of payment of uniform allowances and the allocation of uniforms to bargaining unit employees of the Louisiana Army and Air National Guard. Respondent filed an Answer to the Complaint in which some of the allegations of the Complaint were admitted and others denied.

Subsequently, counsel for the General Counsel filed a Motion for Summary Judgment and supporting documents with the Regional Director for the Washington Regional Office which was

transferred to the Office of the Administrative Law Judges for ruling pursuant to section 2423.22 of the Authority's Rules and Regulations. Thereafter Respondent filed a Response to the General Counsel's Motion for Summary Judgment. Based upon my review and evaluation of the entire record before me, I make the following:

#### Findings of Fact

1. The unfair labor practice charge giving rise to this proceeding was filed by the Union on June 16, 1992, and was duly served upon Respondent.

2. The Union is a labor organization within the meaning of 5 U.S.C. § 7103(a)(4).

3. The Respondent is an agency within the meaning of 5 U.S.C. § 7103(a)(3).

4. At all times material Michael F. Mead occupied the position of Chief, Labor and Employee Services Division for Respondent and was a supervisor or management official within the meaning of 5 U.S.C. §§ 7103(a)(10) and (11) and was acting on behalf of Respondent.

5. At all times material the National Federation of Federal Employees (NFFE) Council of Louisiana National Guard Locals has been the exclusive representative of a state-wide unit of employees appropriate for collective bargaining at Respondent and NFFE Local 1707 is an agent of the Council for representing employees at Respondent's Louisiana Army and Air National Guard, Jackson Barracks.

6. On May 13, 1992 the Federal Service Impasses Panel (the Panel) issued a Decision and Order in Department of Defense, National Guard Bureau, Louisiana Army and Air National Guard, Jackson Barracks, New Orleans, Louisiana and Council of Louisiana National Guard Locals, National Federation of Federal Employees (Jackson Barracks National Guard), Case No. 92 FSIP 85, authorizing payment of uniform allowances and the allocation of uniforms to bargaining unit employees of the Louisiana Army and Air National Guard.

7. By letter dated June 9, 1992 Respondent, by Michael F. Mead, "disapproved" and thereby refused to adopt and implement the Panel's May 13, 1992 Decision and Order.

## Discussion and Conclusions

In Jackson Barracks National Guard the Panel was called upon to resolve a bargaining impasse between the same essential parties as herein. The disagreement primarily concerned ". . . when military uniform allowances authorized under applicable law should be implemented." After considering the positions and arguments of the parties, the Panel ordered the parties to adopt the following wording regarding uniform allowances:

(1) For those employees who are required to wear a prescribed uniform not furnished by the Employer, an annual allowance of \$400 shall be provided for the initial purchase, upkeep, and replacement of such uniforms; (2) for those employees who are required to wear a prescribed uniform which is furnished by the Employer, it shall provide each year uniforms worth \$400.

The Panel noted that the Authority found a substantially identical proposal to be negotiable in National Federation of Federal Employees, Local 1655 and U.S. Department of Defense, National Guard Bureau, Illinois National Guard, Springfield, Illinois (Illinois National Guard), 43 FLRA 1257 (1992).

In the case herein, by letter dated June 9, 1992 Respondent, by Michael F. Mead, notified the Union that it disapproved the Panel's May 13, 1992 Decision and Order in Jackson Barracks National Guard, indicating that Illinois National Guard was before the D.C. Circuit Court of Appeals since the agency in that case disputed the negotiability of the union proposal.<sup>1/</sup> The letter also stated:

The agency views a monetary allowance under 5USC 5901 to be non-bargainable. In our opinion, 5USC 5901 does not permit the payment of a civilian clothing allowance for maintenance of a military uniform nor does that law intend such a outcome. 5USC 5901, in our view, does not apply to technicians.

The FSIP's decision in 92 FSIP 85 is disapproved since it is contrary to 5 USC 5901 and existing policy.

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<sup>1/</sup> Petition for review filed sub nom. U.S. Department of Defense, National Guard Bureau, Springfield, Illinois v. FLRA, No. 92-1133 (D.C. Cir., May 27, 1992).

Counsel for the General Counsel's Motion for Summary Judgement states he relies upon the "reasons set forth by the Authority in (Illinois National Guard)" to support his position. Respondent in its opposition to the Motion for Summary Judgment contends:

(a) 5 U.S.C. 5901 does not apply to technicians who are required to wear the military uniform by long standing agency policy. The law only applies to a civilian clothing allowance for maintenance of civilian attire.

(b) The FSIP had no jurisdiction to order a civilian clothing allowance for personnel required to wear military uniform.

(c) The FSIP order rests on the assumption that Illinois National Guard (43 FLRA 1257) will be upheld by the D.C. Circuit. Granting of summary judgement when the issue of negotiability is pending before the Court is clearly improper.

The facts presented herein and Respondent's contentions (a) and (b) above are not significantly different from those considered and rejected by the Authority in Illinois National Guard. Respondent's argument that granting summary judgment would be "improper" when the negotiability of virtually the same proposal is pending before the Court is unsupported and clearly without merit. Cf. American Federation of Government Employees AFL-CIO, Department of Education Council of AFGE Locals and Department of Education, 42 FLRA 1351, 1353-1354 (1991).

Accordingly, since the provisions imposed by the Panel in this case are not materially different from the provision recently found by the Authority to be negotiable in Illinois National Guard, and Respondent raises no issues or presents any valid argument not previously considered by the Authority, I conclude that Respondent's failure to comply with the lawful Decision and Order of the Panel constituted a failure or refusal to cooperate in an impasse decision in violation of section 7116(a)(1) and (6) of the Statute.<sup>2/</sup> See Veterans Administration, Washington, D.C., 26 FLRA 264 (1987). I therefore recommend the Authority issue the following:

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<sup>2/</sup> Section 7116(a)(6) of the Statute declares it to be an unfair labor practice for an agency "(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter. . . ."

ORDER

Pursuant to section 2423.29 of the Federal Labor Relations Authority's Rules and Regulations and section 7118 of the Statute, it is hereby ordered that the National Guard Bureau, shall:

1. Cease and desist from:

(a) Failing and refusing to comply with the Decision and Order of the Federal Service Impasses Panel in Case No. 92 FSIP 85 by failing and refusing to adopt the language regarding the payment of uniform allowances and the allocation of uniforms ordered by the Panel.

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

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

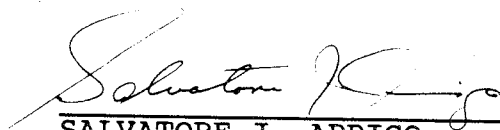
(a) Comply with the Decision and Order of the Federal Service Impasses Panel in Case No. 92 FSIP 85 by adopting the language regarding the payment of uniform allowances and the allocation of uniforms ordered by the Panel.

(b) Post at its Louisiana Army and Air National Guard, Jackson Barracks, New Orleans, Louisiana facilities where there are employees represented by the National Federation of Federal Employees, 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 Commander, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(c) Pursuant to section 2423.30 of the Authority's Rules and Regulations, notify the Regional Director of the Washington Regional Office, 1111 18th Street, NW, 7th Floor,

Washington, DC 20033, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

Issued, Washington, DC, March 4, 1993

  
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SALVATORE J. ARRIGO  
Administrative Law Judge

**NOTICE TO ALL EMPLOYEES**

**AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY**

**AND TO EFFECTUATE THE POLICIES OF THE**

**FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUE**

**WE HEREBY NOTIFY OUR EMPLOYEES THAT:**

WE WILL NOT fail or refuse to comply with the Decision and Order of the Federal Service Impasses Panel in Case No. 92 FSIP 85 by failing or refusing to adopt the language regarding the payment of uniform allowances and the allocation of uniforms ordered by the Panel.

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 comply with the Decision and Order of the Federal Service Impasses Panel in Case No. 92 FSIP 85 by adopting the language regarding the payment of uniform allowances and the allocation of uniforms ordered by the Panel

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Activity)

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 any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Washington Regional Office, 1111 18th Street, NW, 7th Floor, Washington, DC 20033-0758, and whose telephone number is: (202) 653-8500.