

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
80 F Street, N.W. )  
Washington, D.C. 20001, )  
)  
LOCAL 997 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
P.O. Box 2470 )  
Montgomery, Alabama 26102-2470, )  
)  
LOCAL 1364 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
P.O. Box 27077 )  
Naval Air Station )  
Fort Worth Joint Reserve Base, Texas 76127-6200, )  
)  
LOCAL 1367 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
1871 Kirtland Street )  
Building 6149 )  
Lackland Air Force Base, Texas 78236-5525, )  
)  
LOCAL 1709 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
1268 Bay Road )  
Dover, Delaware 19901, )  
)  
LOCAL 1778 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
P.O. Box 278 )  
Wrightstown, New Jersey 08562, )  
)  
LOCAL 1869 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
P.O. Box 4465 )  
Charleston Air Force Base, South Carolina 29404, )  
)  
LOCAL 1952 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
3976 King Graves Highway, Unit 54 )  
Vienna, Ohio 44473, )

C.A. No.

LOCAL 1997 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
650 Military Highway )  
Minneapolis, Minnesota 55450-2100, )  
)  
LOCAL 2077 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
216 Arnold Circle )  
Building 945 )  
Selfridge Air National Guard Base, Michigan 48045, )  
)  
LOCAL 2316 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
911th Air Wing )  
Pittsburgh International Airport Air Reserve Station )  
2375 Hercules Court )  
Coraopolis, Pennsylvania 15108-4495, )  
)  
LOCAL 2361 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
P.O. Box 5022 )  
Whiteman, Missouri 65305, )  
)  
LOCAL 2568 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
525 Lake Victoria Circle )  
Melbourne, Florida 32940, )  
)  
LOCAL 3707 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
Westover Air Reserve Base )  
Chicopee, Massachusetts 01022, )  
)  
LOCAL 3854 )  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES )  
P.O. Box 6207 )  
March Air Reserve Base, California 92518, )  
)  
*and* )  
)  
MARK WINSTEAD )  
459th Airlift Wing )  
3617 Patrick Avenue )  
Andrews Air Force Base, Maryland 20762, )  
)  
*Plaintiffs,* )

v. )  
 )  
 SECRETARY OF THE AIR FORCE )  
 The Pentagon )  
 Washington, D.C. 20330-1000, )  
 )  
*Defendant.* )

COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF

1. This is an action for declaratory and injunctive relief brought by the American Federation of Government Employees, AFL-CIO (“AFGE”), 14 of its locals that represent “dual status” Air Reserve Technicians (“ARTs”), and a member of a 15th AFGE local. The case seeks to invalidate as arbitrary and capricious and contrary to law certain Air Force regulation changes promulgated in 2007 that purport to compel the locals’ members to wear military uniforms even when serving in their civilian capacity. At least one ART who is a member of AFGE has already been disciplined for refusing to wear his military uniform while in civilian status.

2. A civilian cannot be required to wear a military uniform. Requiring ARTs to do so when serving in their civilian capacity not only improperly upsets settled expectations, but confuses military and civilian status in an era when having or not having the protections of the Geneva Conventions is all too real an issue as to which clarity is critical, and represents serious official overreaching in the teeth of actual knowledge that Congress has not authorized the Air Force Reserve to impose such a requirement on ARTs.

*Jurisdiction*

3. Jurisdiction rests on 28 U.S.C. § 1331, 10 U.S.C. §§ 771 and 10216, and Air Force Instructions (“AFIs”) 36-801, *Uniforms for Civilian Employees*, 36-2903, *Dress and*

*Personnel Appearance of Air Force Personnel*, and 37-703, *Civilian Conduct and Responsibility* (collectively, “the regulations”). Plaintiffs also seek a declaratory judgment under 28 U.S.C. § 2201 and further relief under 28 U.S.C. § 2202.

*Venue*

4. Venue is proper in this district in accordance with 28 U.S.C. §1391(e).

*Parties*

5. Plaintiff AFGE, a labor organization affiliated with the AFL-CIO, represents approximately 600,000 federal government employees throughout numerous federal government departments and agencies. AFGE represents the interests of employees within its bargaining units by, *inter alia*, enforcing the legal rights of its bargaining unit employees, negotiating collective bargaining agreements, arbitrating grievances, filing unfair labor practices, lobbying, and litigating employees’ collective and individual rights in the federal courts and administrative agencies. The other plaintiffs are local labor unions chartered by AFGE and Mark Winstead, who is a member of the AFGE local at Andrews Air Force Base, Maryland. Plaintiff Winstead and the locals’ other members are ARTs whose dual status employment is governed by 10 U.S.C. § 10216. All plaintiffs’ addresses are stated in the caption.

6. Defendant is Secretary of the Air Force. As such, he is responsible for assigning, detailing, and prescribing the duties of members of the Air Force as well as civilian personnel of the Department of the Air Force. 10 U.S.C. § 8013(g).

### *Facts*

7. The reserve component (“RC”) of the United States armed forces—which includes, among other elements, the Air Force Reserve—employs a core group of full-time employees to administer RC units, train RC personnel, and maintain RC equipment.

8. These employees are known as Full-Time Support (“FTS”) personnel.

9. Military technicians (“MTs”) are one category of FTS personnel.

10. Those MTs who hold membership in the Selected Reserve are referred to as “dual status technicians” because of their status as both civilian employees and reservists.

11. The Air Force Reserve’s technician program was established in 1957 under the statutory umbrella of the civil service.

12. MTs such as ARTs are federal civilian employees who provide support primarily to wartime deployable reserve units.

13. MTs shall not perform their civilian duties during [their inactive duty or annual military reserve] training unless their civilian and military duties are identical. DoD Instruction 1205.18, ¶ 6.10.4.

14. ARTs are federal civilian employees hired under 5 U.S.C. § 3101.

15. As a condition of employment, ARTs are required to maintain active membership in the Air Force Reserve unit in which the position they hold is authorized and be assigned militarily to the designated ART position. 10 U.S.C. § 10216(d).

16. Unlike non-dual-status MTs, ARTs can be ordered to deploy with their unit if it is mobilized.

17. In his or her military capacity, an ART may be a commissioned officer, a warrant officer, or an enlisted member.

18. ARTs receive regular pay for their civil service jobs, plus military pay for their weekend and summer active duty tours.

19. Because they are members of the civil service, ARTs may qualify for a civil service pension.

20. They may also qualify for military retired pay based on their active and reserve military service.

21. ARTs are subject to timekeeping requirements pursuant to federal regulations for civilian employees with respect to their civilian employment.

22. ARTs receive annual leave pursuant to federal regulations for civilian employees with respect to their civilian employment.

23. In their civilian capacity, ARTs are subject to civil service laws and regulations and are entitled, for example, to the protection of Title VII, 42 U.S.C. § 2000e-16, for claims that arise solely from the civilian aspects of their positions.

24. On August 6, 2007, the Secretary amended the regulations to provide that ARTs must wear the military uniform while performing civilian duties.

25. The Air Force has announced that the requirements imposed by the August 7, 2007 amendments are not negotiable within the context of collective bargaining between it and AFGE's locals.

26. Although the National Guard Technicians Act provides that dual status National Guard technicians—an MT category that is distinct from ARTs—may be required to wear the military uniform even while in civilian status, 10 U.S.C. § 709(b)(4), Congress has nowhere required that ARTs wear the military uniform while in civilian status. 10 U.S.C. § 10216.

27. On February 5, 2008, the Department of Defense asked Congress to amend § 10216(a) by adding a provision conferring on the Secretary and the Secretary of the Army the power to prescribe regulations to “require a military technician (dual status), while performing duties as a military technician (dual status), to wear the uniform appropriate for the member’s grade and component of the armed forces.”

28. Although uniforms are worn in many settings, including many civilian settings, military uniforms enjoy a unique place in American society, United States law, *e.g.*, 10 U.S.C. § 771, 18 U.S.C. §§ 702-03, and international humanitarian law.

29. Compliance with the regulations potentially exposes the individual plaintiff and the ARTs who are members of the other plaintiffs to criminal prosecution under 18 U.S.C. § 702. *See also* 10 U.S.C. § 771.

#### ***First Cause of Action***

30. The averments of ¶¶ 1-29 are incorporated herein.

31. The Administrative Procedure Act (“APA”) confers on the Court authority to set aside agency action that is arbitrary and capricious. 5 U.S.C. § 706.

32. To the extent they require plaintiff Winstead and AFGE’s and the locals’ other members to wear military uniforms even when he and they are serving in their civilian capacity, the regulations are arbitrary and capricious. 5 U.S.C. § 706(2)(A).

#### ***Second Cause of Action***

33. The averments of ¶¶ 1-29 are incorporated herein.

34. The APA confers on the Court authority to set aside agency action that is contrary to law. 5 U.S.C. § 706(2)(A).

35. To the extent they require plaintiff Winstead and AFGE's and the locals' other members to wear military uniforms even when he and they are serving in their civilian capacity, the regulations are contrary to law. 10 U.S.C. §§ 771, 10216; 18 U.S.C. § 702.

***Third Cause of Action***

36. The averments of ¶¶ 1-29 are incorporated herein.

37. The APA confers on the Court authority to set aside agency action that is in excess of statutory authority. 5 U.S.C. § 706(2)(C).

38. To the extent they require plaintiff Winstead and AFGE's and the locals' other members to wear military uniforms even when he and they are serving in their civilian capacity, the regulations are in excess of statutory authority. 10 U.S.C. § 10216.

***Prayer***

WHEREFORE, having no adequate remedy at law, plaintiffs pray that a judgment enter declaring invalid the August 7, 2007 amendments to the regulations and directing the Secretary to cease and desist all efforts to compel the locals' members to wear military uniforms when they are performing duty in their civilian capacity.

Plaintiffs further pray that the Court grant such other and further relief as may in the circumstances be just and proper.

Respectfully submitted,

/s/  
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*Attorneys for Plaintiff*

April 22, 2008

Serve:

1. Secretary of the Air Force
2. The Attorney General
3. United States Attorney for the District of Columbia  
(Civil Process Clerk)