

No. 21-1454

**In the Supreme Court of the United States**

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THE OHIO ADJUTANT GENERAL'S DEP'T, ET AL.,  
*Petitioners,*

v.

FEDERAL LABOR RELATIONS AUTHORITY, ET AL.,  
*Respondents.*

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*ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT*

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**JOINT APPENDIX**

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PETITION FOR WRIT OF CERTIORARI FILED MAY 13, 2022  
CERTIORARI GRANTED OCTOBER 3, 2022

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## RELEVANT DOCKET ENTRIES

*OH Adjutant General's Dept, et al v.*  
*American Federation of Gov,*  
U.S. Court of Appeals  
for the Sixth Circuit  
Case No. 20-3908

- 08/28/2020 1 Agency Case Docketed. Notice filed by Petitioners John C. Harris, Jr., The Ohio Adjutant General's Department and U.S. Department of Defense. Petition Received in 6CA: 08/28/2020. (JEC) [Entered: 08/28/2020 12:51 PM]
- 08/31/2020 4 FILED: Corrected Petition for Review by Mr. Dale T. Vitale for John C. Harris, Jr., The Ohio Adjutant General's Department and U.S. Department of Defense. Certificate of Service: 08/31/2020. [20-3908] (DTV) [Entered: 08/31/2020 05:19 PM]
- 09/11/2020 10 MOTION to INTERVENE filed by Matthew W. Milledge for American Federation of Government Employees Local 3970. Certificate of Service: 09/11/2020. [20-3908] (MWM) [Entered: 09/11/2020 01:27 PM]
- 09/21/2020 11 RESPONSE in support filed regarding a motion, [10];

- previously. Response from Attorney Mr. Dale T. Vitale for Petitioners John C. Harris, Jr., The Ohio Adjutant General's Department and U.S. Department of Defense. Certificate of Service: 09/21/2020. [20-3908] (DTV) [Entered: 09/21/2020 02:53 PM]
- 10/07/2020 12 CERTIFIED LIST filed. Certificate of Service: 10/07/2020. [20-3908] (RJO) [Entered: 10/07/2020 06:04 PM]
- 01/28/2021 13 ORDER filed granting motion to intervene [10].. John K. Bush, Circuit Judge. (JEC) [Entered: 01/28/2021 11:48 AM]
- 03/08/2021 18 PETITIONER BRIEF filed by Mr. Benjamin Michael Flowers for John C. Harris, Jr., The Ohio Adjutant General's Department and U.S. Department of Defense.. Certificate of Service: 03/08/2021. Argument Request: requested. [20-3908] (BMF) [Entered: 03/08/2021 02:54 PM]
- 03/08/2021 19 APPENDIX filed by Mr. Benjamin Michael Flowers for John C. Harris, Jr., The Ohio Adjutant General's Department and U.S. Department of Defense. Volume: 1; Pages: 1 - 514. Certificate of Service: 03/08/2021.

- [20-3908] (BMF) [Entered:  
03/08/2021 02:56 PM]
- 04/29/2021 22 RESPONDENT BRIEF filed by  
Mr. Noah Barnett Peters for  
FLRA. Certificate of Service:  
04/29/2021. Argument Request:  
not requested.. [20-3908] (NBP)  
[Entered: 04/29/2021 05:35 PM]
- 04/29/2021 23 SUPPLEMENTAL APPENDIX  
filed by Mr. Noah Barnett Peters  
for FLRA. Certificate of Service:  
04/29/2021. [20-3908] (NBP)  
[Entered: 04/29/2021 05:45 PM]
- 04/29/2021 24 INTERVENOR BRIEF filed by  
Mr. Matthew Whitmore Milledge  
for American Federation of  
Government Employees..  
Certificate of Service: 04/29/2021.  
[20-3908] (MWM) [Entered:  
04/29/2021 10:15 PM]
- 05/19/2021 26 REPLY BRIEF filed by Attorney  
Mr. Benjamin Michael Flowers  
for Petitioners John C. Harris,  
Jr., The Ohio Adjutant General's  
Department and U.S.  
Department of Defense.  
Certificate of Service: 05/19/2021.  
[20-3908] (BMF) [Entered:  
05/19/2021 03:06 PM]
- 10/27/2021 35 CAUSE ARGUED by Mr.  
Matthew Whitmore Milledge for  
Intervenor American Federation

- of Government Employees, Mr. Michael Jason Hendershot for Petitioners U.S. Department of Defense, The Ohio Adjutant General's Department and John C. Harris, Jr. and Rebecca J. Osborne for Respondent FLRA before Daughtrey, Circuit Judge; Cole, Circuit Judge and Clay, Circuit Judge. (KSF) [Entered: 10/27/2021 11:16 AM]
- 12/21/2021 36 OPINION and JUDGMENT filed : PETITION DENIED. Decision for publication. Martha Craig Daughtrey, R. Guy Cole, Jr. (AUTHORING), and Eric L. Clay, Circuit Judges. (CL) [Entered: 12/21/2021 02:00 PM]
- 01/24/2022 39 PETITION for en banc rehearing filed by Mr. Benjamin Michael Flowers for John C. Harris, Jr., The Ohio Adjutant General's Department and U.S. Department of Defense. Certificate of Service: 01/24/2022. [20-3908] (BMF) [Entered: 01/24/2022 04:49 PM]
- 02/14/2022 40 ORDER filed denying petition for en banc rehearing [39] filed by Mr. Benjamin Michael Flowers. Martha Craig Daughtrey, Guy Cole, Jr., and Eric L. Clay, Circuit



Judges. (BLH) [Entered:  
02/14/2022 10:42 AM]

02/22/2022 41 MANDATE ISSUED with no  
costs taxed. (PJE) [Entered:  
02/22/2022 07:56 AM]

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL LABOR  
RELATIONS AUTHORITY  
CHICAGO REGION

Case Nos. CH-CA-17-0248, CH-CA-17-0249,  
CH-CA-17-0251, CH-CA-17-0252, CH-CA-17-0336

U.S. DEPARTMENT OF DEFENSE  
OHIO NATIONAL GUARD

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3970, AFL-CIO

Charging Party

**ORDER CONSOLIDATING CASES,  
CONSOLIDATED COMPLAINT AND NOTICE  
OF HEARING**

Pursuant to Section 2429.2 of the Rules and Regulations of the Federal Labor Relations Authority (the Authority) and to avoid unnecessary costs or delay, it is ordered that Case Nos. CH-CA-17-0248, CH-CA-17-0249, CH-CA-17-0251 and CH-CA-17-0252, which are based on charges filed by the American Federation of Government Employees, Local 3970, AFL-CIO (Union) against the U.S. Department of Defense, Ohio National Guard (the Respondent), are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 7118 of the Federal Service Labor-Management Relations Statute (the Statute) and Section 2423.20(a) of the

Authority's Regulations and alleges that the Respondent has violated the Statute as described below:

1. The Union filed the charges in this proceeding on March 8, 2017, and a copy was served on the Respondent.
2. The Respondent is an agency within the meaning of Section 7103(a)(3) of the Statute.
3. The Union is a labor organization within the meaning of Section 7103(a)(4) of the Statute.
4. On February 12, 1990, the Authority certified the Union as the exclusive representative of the following consolidated unit of Respondent's employees:

All General Schedule and Wage Board Technicians employed in the Air National Guard and the Army National Guard in the State of Ohio (the Unit).<sup>1</sup>

5. At all times since February 12, 1990, based on Section 7112(d) of the Statute, the Union has been the exclusive representative of the Unit.
6. The employees of the Unit are employees within the meaning of Section 7103(a)(2) of the Statute.
7. The Respondent and the Union are parties to a collective bargaining agreement covering employees in the Unit described in paragraph

---

<sup>1</sup> Employees of the Unit were first recognized in 1971 under Executive Order 11491, the predecessor to the Statute.

4, which was effective on February 24, 2011 until February 24, 2014 (the expired CBA).

8. At all material times, the following individuals held the positions set opposite their names and have been supervisors or management officials within the meaning of Section 7103(a)(10) and (11) of the Statute and agents of the Respondent acting upon its behalf:

Colonel William K. Giezie     Director     of  
Human Resources

Duncan D. Aukland     Labor     Relations  
Specialist

Captain Daryl Scott     Supervisory     HR  
Specialist

9. On January 24, 2014, the Respondent, by Colonel Homer Rogers, then Human Resources Officer, notified the Union that it would no longer be bound by certain subjects that it said were permissive subjects of bargaining of the expired CBA. The Respondent notified the Union that it intended to continue to honor those provisions of the expired CBA that concern mandatory subjects of bargaining to include the grievance process, seniority, and dues withholding. The Respondent notified the Union that it would continue to allow those who have been identified as union representatives a reasonable amount of official time for representational activities.

10. On September 28, 2016, the Respondent, by Giezie, issued a memorandum stating (1) that the Respondent is not bound by any provision of the expired CBA; (2) that the Respondent

does not consider itself obligated to abide by the Statute, (3) that, pending a new CBA, or some definitive determination that the Statute applies to the Respondent, the interim guidance to supervisors for management of the Technician workforce is to follow certain Technician Personnel Regulations with the understanding that any requirements of the Regulations that are dictated by the expired CBA or the Statute may be waived by the Human Resources Office; and (4) that grievances will be forwarded to the HRO for ad hoc resolution.

11. Since on or about September 28, 2016, the Respondent has maintained that it is not subject to the Statute and that any rights accorded to the Union and Unit employees by the Statute are not applicable or controlling on the Respondent.
12. Since on or about September 28, 2016, the Respondent has refused to grant official time to Union Representatives.
13. Since on or about September 28, 2016, and continuing, the Respondent has refused to process grievances through the negotiated grievance procedure in the expired CBA and no longer recognizes the applicability of final and binding arbitration to the Respondent.
14. Since on or about September 28, 2016, and continuing, the Respondent stopped informing the Union before it initiates disciplinary action or a letter of counseling against an employee, as had been its prior practice, and as was required by the expired CBA.

15. Since on or about September 28, 2016, the Respondent has not recognized any mandatory term of the expired CBA between the parties.
16. Since on or about September 28, 2016, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive representative of the Unit.
17. Starting on or about November 14, 2016, the Respondent sent notices to the majority of the bargaining unit employees who had authorized Union dues allotments. The Respondent gave the employees sixty (60) days to complete a new SF 1187 or send in a copy of their old form.
18. Starting in or around January 2017, the Respondent by Scott, completed a SF 1188 for the employees who did not return a fully executed SF 1187. Scott signed his own name in the signature block where it said "Signature of Employee." Following the execution of the SF 1188s, the Respondent terminated the dues of the majority of the bargaining unit employees then paying dues to the Union and stopped remitting dues to the Union. The employees did not authorize the Respondent to execute SF 1188s on their behalf.
19. On January 10, 2017, the Respondent, by Auckland, informed Chon Jung, National Representative for the American Federation of Government Employees, AFL-CIO that that it is "not only the right but the duty of the Agency to terminate [dues] allotments." Auckland stated that "no employee should be paying dues to AFGE" and that Respondent "reserves the right to terminate all union dues allotments

until there is a CBA.” The Respondent further contended that the FLRA has no lawful authority over the Respondent.

20. On February 6, 2017, the Respondent implemented a new merit promotion plan, without providing the Union notice and an opportunity to bargain. The plan conflicts with the mandatory terms of the parties’ expired CBA and the parties’ past practices. For example, the plan requires vacancy announcements to be posted for 15 days, when previously the Respondent had posted vacancy announcements for 30 days. It also permits posting vacancy announcements less than statewide, when, previously, such announcements were required to be posted statewide.
21. On February 27, 2017, Shawn Rice, Union Secretary-Treasurer and bargaining unit employee, protested the Respondent’s termination of employees’ dues withholdings, explaining that dues should not be cancelled unless the employee had signed an SF 1188. He said that he did not sign an SF 1188 and that if his dues are cancelled, he will be forced to file a grievance.
22. On March 1, 2017, the Respondent, by Auckland, responded to Rice’s communication described in paragraph 21. Auckland said that Department of Defense financial regulations “call[] into question whether members of a union, not having a contract, may have dues withheld from their pay.” Auckland explained that while Rice can fill out a new SF 1187, he “can’t say

whether the Agency will honor a new SF 1187 without a new CBA.” Auckland also explained that the entire expired collective bargaining agreement between the parties is “a nullity, including the contractual grievance process, because it has expired.”

23. By the conduct described in paragraphs 10, 12-15, 17-20, and 22 the Respondent has refused to recognize the mandatory terms of the expired CBA.
24. By the conduct described in paragraphs 10, 12-20, and 22 the Respondent has been refusing to negotiate in good faith with the Union in violation of Section 7116(a)(l) and (5) of the Statute.
25. By the conduct described in paragraphs 17-19, and 22 the Respondent has been failing and refusing to comply with its obligations under Section 7115(a) of the Statute to honor dues withholding authorizations and make appropriate allotments to the exclusive representative and has thereby violated Section 7116(a)(l) and (8) of the Statute.
26. By the conduct described in paragraphs 10-20 and 22-25 the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7102 of the Statute in violation of Section 7116(a)(l) of the Statute.

### **Answer Requirement**

Respondent is notified that, pursuant to Section 2423.20(b) of the Authority’s Regulations, it must file an answer to the complaint. Respondent must file an



original and four (4) copies of the answer with the Office of Administrative Law Judges, FLRA, 1400 K St., NW, Washington, DC 20424-0001 by **May 8, 2017**. See Sections 2429.24(d) and 2429.25(a) of the Authority's Regulations. Respondent must also serve a copy of the answer on the Region and Charging Party. See Section 2429.27 of the Authority's Regulations.

An answer may also be filed electronically through the Authority's web site. See Section 2429.24(f) of the Authority's Regulations. To file an answer electronically, go to **www.flra.gov**, select **File a Case** under the **Case Types** tab and follow the instructions.

The answer must admit, deny, or explain each allegation of the complaint. A failure to file an answer or respond to any allegation will, absent a showing of good cause, constitute an admission.

### **Notice of Hearing**

PLEASE TAKE NOTICE that on **June 22, 2017**, at a place to be determined in Columbus, Ohio, a hearing on this complaint will be conducted before an Administrative Law Judge of the Authority. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The hearing procedures are described in Sections 2423.30 to 2423.34 of the Authority's Regulations. The prehearing procedures are described in Sections 2423.20 to 2423.28 of the Authority's Regulations.

s/ SANDRA LeBOLD  
Sandra LeBold, Regional Director  
Federal Labor Relations Authority

Chicago Regional Office  
224 S. Michigan Avenue, Suite 445  
Chicago, Illinois 60604-2505  
Tel: 312-886-3465, Fax. 312-886-5977

Dated: April 13, 2017

**Certificate of Service**

I certify that copies of the Complaint and Notice of Hearing in Case Nos. CH-CA-17-0248, CH-CA-17-0249, CH-CA-17-0251, & CH-CA-17-0252 have this day been sent by first-class mail to the following individuals:

Charles R. Center  
Chief Administrative Law Judge  
Federal Labor Relations Authority  
1400 K Street, N.W., Suite 300  
Washington, DC 20424-0001

Duncan Aukland  
Labor Relations Specialist  
Ohio National Guard  
Adjutant General's Department  
2825 West Dublin Granville Road  
Columbus, Ohio 43235-2789

Bill Kudrle  
Associate General Counsel  
AFGE  
80 F Street NW  
Washington, DC 20001

Peter Sutton, Acting General Counsel  
Federal Labor Relations Authority  
1400 K Street, NW., Second Floor  
Washington, DC 20424-0001  
Fax: 202-482-6608

s/ INEZ THOMAS  
Inez Thomas, Administrative Officer

Dated: April 13, 2017

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL LABOR  
RELATIONS AUTHORITY  
CHICAGO REGION

Case Nos. CH-CA-17-0336

U.S. DEPARTMENT OF DEFENSE  
OHIO NATIONAL GUARD

Respondent

and

AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3970, AFL-CIO

Charging Party

**ORDER CONSOLIDATING CASES,  
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 2429.2 of the Rules and Regulations of the Federal Labor Relations Authority (the Authority) and to avoid unnecessary costs or delay, it is ordered that Case No. CH-CA-17-0336, which is based on a charge filed by the American Federation of Government Employees, Local 3970, AFL-CIO (Union) against the U.S. Department of Defense, Ohio National Guard (the Respondent), be consolidated with Case Nos. CH-CA-17-0248, CH-CA-17-249, CH-CA-17-0251 and CH-CA-17-0252.

This Complaint and Notice of Hearing, which is issued pursuant to Section 7118 of the Federal Service Labor-Management Relations Statute (the Statute) and Section 2423.20(a) of the Authority's Regulations and alleges that the Respondent has violated the Statute as described below:

1. The Union filed the charge in this proceeding on April 20, 2017, and a copy was served on the Respondent.
2. The Respondent is an agency within the meaning of Section 7103(a)(3) of the Statute.
3. The Union is a labor organization within the meaning of Section 7103(a)(4) of the Statute.
4. On February 12, 1990, the Authority certified the Union as the exclusive representative of the following consolidated unit of Respondent's employees:

All General Schedule and Wage Board Technicians employed in the Air National Guard and the Army National Guard in the State of Ohio (the Unit).<sup>1</sup>

5. At all times since February 12, 1990, based on Section 7112(d) of the Statute, the Union has been the exclusive representative of the Unit.
6. The employees of the Unit are employees within the meaning of Section 7103(a)(2) of the Statute.
7. At all material times, the following individuals held the positions set opposite their names and have been supervisors or management officials within the meaning of Section 7103(a)(10) and (11) of the Statute and agents of the Respondent acting upon its behalf:

---

<sup>1</sup> Employees of the Unit were first recognized in 1971 under Executive Order 11491, the predecessor to the Statute.

Colonel William K. Giezie     Director     of  
Human Resources

Duncan D. Aukland     Labor     Relations  
Specialist

Captain Daryl Scott     Supervisory     HR  
Specialist

8. Starting on or about April 4, 2017, the Respondent notified employees then paying dues to the Union that it will “recommend” that the Defense Finance and Accounting Service (DFAS) terminate their dues withholding effective 60 days from the date of the notification. The Respondent explained that the Adjutant General cannot lawfully ask that dues be withheld from employees pay because there is no collective bargaining agreement with the Union. The Respondent further informed employees that if they wish to pay dues to the Union they need to pay the Union by personal check or electronic bank transfer from their bank account. (See Attachment A)
9. By the conduct described in paragraph 8, the Respondent has been failing and refusing to comply with its obligations under Section 7115(a) of the Statute to honor dues withholding authorizations and make appropriate allotments to the exclusive representative and has thereby violated Section 7116(a)(l) and (8) of the Statute.
10. By the conduct described in paragraph 8, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section

7102 of the Statute and has thereby violated Section 7116(a)(1) of the Statute.

### **Answer Requirement**

Respondent is notified that, pursuant to Section 2423.20(b) of the Authority's Regulations, it must file an answer to the complaint. Respondent must file an original and four (4) copies of the answer with the Office of Administrative Law Judges, FLRA, 1400 K St., NW, Washington, DC 20424-0001 by **May 29, 2017**. See Sections 2429.24(d) and 2429.25(a) of the Authority's Regulations. Respondent must also serve a copy of the answer on the Region and Charging Party. See Section 2429.27 of the Authority's Regulations.

An answer may also be filed electronically through the Authority's web site. See Section 2429.24(f) of the Authority's Regulations. To file an answer electronically, go to **www.flra.gov**, select **File a Case** under the **Case Types** tab and follow the instructions.

The answer must admit, deny, or explain each allegation of the complaint. A failure to file an answer or respond to any allegation will, absent a showing of good cause, constitute an admission.

### **Notice of Hearing**

PLEASE TAKE NOTICE that on **June 22, 2017**, at a place to be determined in Columbus, Ohio, a hearing on this complaint will be conducted before an Administrative Law Judge of the Authority. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The hearing procedures are described in Sections 2423.30 to 2423.34 of the Authority's Regulations. The

prehearing procedures are described in Sections 2423.20 to 2423.28 of the Authority's Regulations.

s/ SANDRA LeBOLD

Sandra LeBold, Regional Director  
Federal Labor Relations Authority  
Chicago Regional Office  
224 S. Michigan Avenue, Suite 445  
Chicago, Illinois 60604-2505  
Tel: 312-886-3465, Fax. 312-886-5977

Dated: May 4, 2017



**Certificate of Service**

I certify that copies of the Complaint and Notice of Hearing in Case No. CH-CA-17-0336 have this day been sent by first-class mail to the following individuals:

Charles R. Center  
Chief Administrative Law Judge  
Federal Labor Relations Authority  
1400 K Street, N.W., Suite 300  
Washington, DC 20424-0001

Duncan Aukland  
Labor Relations Specialist  
Ohio National Guard  
Adjutant General's Department  
2825 West Dublin Granville Road  
Columbus, Ohio 43235-2789

Bill Kudrle  
Associate General Counsel  
AFGE  
80 F Street NW  
Washington, DC 20001

Peter Sutton, Acting General Counsel  
Federal Labor Relations Authority  
1400 K Street, NW., Second Floor  
Washington, DC 20424-0001  
Fax: 202-482-6608

s/ INEZ THOMAS  
Inez Thomas, Administrative Officer

Dated: May 4, 2017

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL LABOR  
RELATIONS AUTHORITY  
CHICAGO REGION**

**Case Nos. CH-CA-17-0248-0249-0251-0252-0336**

**U.S. DEPARTMENT OF DEFENSE  
OHIO NATIONAL GUARD**

Respondent

and

**AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3970, AFL-CIO**

Charging Party

**Agency Answer to Consolidated Complaint and  
Notice of Hearing**

1. The Respondent, the Ohio National Guard, denies that the charges were filed by AFGE Local 3970 as alleged for want of any proof that the Local filed or authorized the filing of the charges. The Respondent further denies that it is in any way an agency or entity of the United States Department of Defense and in making this response, does not accede to the applicability of 5 USC Chapter 71.

2. The Respondent denies that it is an Agency within the meaning of 5 USC 7103(a)(3) in that it is not an executive agency of the United States but is instead better known as the Ohio Adjutant General's Department established under Title 59 of the Ohio Revised Code.

3. The Respondent admits that the Union is a labor organization but cannot concede that AFGE

Local 3970 has taken any active part in these proceedings.

4. The Respondent admits paragraph 4.

5. The Respondent would admit paragraph 5 if the Respondent were an Agency within the meaning of 5 USC 7103(a)(3); but since it is not such an Agency; and since exclusive representation only is authorized before such an Agency, therefore denies paragraph 5.

6. If Respondent were an Agency within the meaning of Section 7103(a)(3), then the employees of the Unit would be employees within the meaning of Section 7103(a)(2)(A); but since the Respondent is not such an Agency, the members of the Unit are not such employees. Additionally, most members of the Unit are members of the Uniformed Services and thus exempt under Section 7103(a)(2)(B)(ii).

7. The Respondent and the Union WERE parties to the expired CBA.

8. Respondent admits paragraph 8, except to the extent that other allegations in the Complaint conflict therewith.

9. The Respondent admits paragraph 9.

10. The Respondent admits paragraph 10.

11. As discussed above, the Respondent is not an Agency within the meaning of the statute; so its employees are not employees within the meaning of the statute.

12. The Respondent denies that any Union Official has requested official time since September 28, 2016.

13. The Respondent denies that any Technician has requested to process a grievance of any kind under any process since September 28, 2016.

14. The Respondent denies receiving any request for Union representation since September 28, 2016 and in any case would not have known to whom to refer any such request.

15. The Respondent denies that any request has been made of Respondent to honor any provision of the expired contract aside from the “ready, fire, aim” tactic of filing Unfair Labor Practice charges alleging the expired contract has not been honored by the Respondent.

16. The Respondent denies receiving any request to bargain from the Union for the period September 28, 2016 to May 5, 2017.

17. The Respondent admits paragraph 17.

18. The Respondent admits that Scott signed SF 1188s for employees but since more than a few employees expressed their gratitude to the Respondent for terminating their dues withholding allotments, denies that no employees authorized the termination of dues withholdings.

19. The Respondent admits that since it is not an Agency within the meaning of the Statute, it sent the correspondence to Chon Jung, whose authority to act on behalf of Local 3970 is denied. The Agency also asserted the lack of federal agency authority over The Adjutant General of Ohio as a State Official.

20. The Respondent denies that it did not give the Union notice and an opportunity to bargain over the

Merit Promotion Plan and denies that the new plan conflicts with the expired contract.

21.The Respondent denies any knowledge that Shaun Rice was the Union's Secretary-Treasurer and further denies that the Respondent stopped withholding dues from his pay in that Respondent doesn't pay Shaun Rice or any other National Guard Technician. Respondent admits the balance of Paragraph 21

22.Respondent admits paragraph 22.

23.Since Respondent is not an Agency subject to the Statute and thus obligated to abide by the mandatory terms of the expired contract, the Respondent denies paragraph 23.

24.Respondent denies paragraph 24.

25.Respondent denies paragraph 25.

26.Respondent denies paragraph 26.

Respectfully submitted,

THE OHIO NATIONAL GUARD

s/ CHRISTOPHER STALLKAMP /

By direction A.H. Leonatti

Christopher Stallkamp

Lieutenant Colonel

Ohio Air National Guard

1947 Harrington Road

Mansfield, Ohio 44903-8094

(419) 520-6198

**Certificate of Service**

The undersigned certifies that a true and accurate copy of the foregoing Agency Answer to Consolidated Complaint and Notice of Hearing was duly served upon the following via regular U.S. Mail, first class, postage pre-paid, this 8th day of May 2017:

Sandra LeBold, Regional Director  
Federal Labor Relations Authority  
Chicago Regional Office  
224 S. Michigan Avenue, Suite 445  
Chicago, Illinois 60604-2505

Bill Kudrle  
Associate General Counsel  
AFGE  
80 F Street NW  
Washington, DC 20001

Charles R. Center  
Chief Administrative Law Judge  
Federal Labor Relations Authority  
1400 K Street, N.W., Suite 300  
Washington, DC 20424-0001

Peter Sutton, Acting General Counsel  
Federal Labor Relations Authority  
1400 K Street, NW., Second Floor  
Washington, DC 20424-0001

s/ CHRISTOPHER STALLKAMP /  
By direction A.H. Leonatti  
Christopher Stallkamp  
Lieutenant Colonel  
Ohio Air National Guard  
1947 Harrington Road  
Mansfield, Ohio 44903-8094  
(419) 520-6198

**BEFORE THE FEDERAL LABOR  
RELATIONS AUTHORITY  
CHICAGO REGION**

**Case No. CH-CA-17-0336  
(Consolidated with CH-CA-17-0248, CH-CA-17-  
0249, CH-CA-17-0251, & CH-CA-17-0252)**

**U.S. DEPARTMENT OF DEFENSE  
OHIO NATIONAL GUARD**

**Respondent**

**and**

**AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3970, AFL-CIO**

**Charging Party**

**Respondent's Answer to Order Consolidating  
Cases, Complaint, and Notice OF Hearing –  
RE: Case No. CH-CA-17-0336**

1. The Respondent, the Ohio National Guard, is a separate and independent entity of the U.S Department of Defense and this Answer should be construed solely as the Answer of the Ohio Air National Guard and not as a combined Answer the US Department of Defense and the Ohio Air National Guard.
2. The Respondent lacks sufficient information to either affirm or deny that the charge was filed by AFGE Local 3970 as alleged for want of any proof that the Local filed or authorized the filing of the charges. The Respondent further denies that that it is in any way an agency or entity of the United States Department of Defense and in making this

response, does not accede to the applicability of 5 USC Chapter 71

3. The Respondent denies that it is an Agency within the meaning of 5 USC 7103(a)(3) in that it is not an executive agency of the United States but is instead better known as the Ohio Adjutant General's Department established under Title 59 of the Ohio Revised Code.
4. The Respondent admits that the Union is a labor organization but cannot concede that AFGE Local 3970 has taken any active part in these proceedings.
5. The Respondent admits paragraph 4.
6. The Respondent would admit paragraph 5 if the Respondent were an Agency within the meaning of 5 USC 7103(a)(3); but since it is not such an Agency; and since exclusive representation only is authorized before such an Agency, it therefore denies paragraph 5.
7. If Respondent were an Agency within the meaning of Section 7103(a)(3), then the employees of the Unit would be employees within the meaning Section 7103(a)(2)(A); but since the Respondent is not such an Agency, the members of the Unit are not such employees. Additionally, most members of the Unit are members of the Uniformed Services and thus exempt under Section 7103(a)(2)(B)(ii).
8. The Respondent admits the allegation contained within paragraph 7.
9. The Respondent admits the allegation contained within paragraph 8.



10. The Respondent denies the allegation contained within paragraph 9. The Respondent is not an Agency within the meaning of the statute and therefore not subject to the provisions and obligations of Section 7115(a), 7116(a)(1), and (8) of the Statute. Furthermore, even the Respondent were an Agency within the meaning of the statute, its actions as admitted in paragraph 8 of the Complaint would not be considered a violation of Section 7115(a) of the Statute; in that the sixty (60) day period established in the notification to employees has not yet expired and therefore it has not made any recommendation that the Defense Finance and Accounting Service (DFAS) terminate dues withholding.
11. The Respondent denies the allegation contained within paragraph 10. The Respondent is not an Agency within the meaning of the statute and therefore not subject to the provisions and obligations of Section 7115(a), 7116(a)(1), and (8) of the Statute. Furthermore, even the Respondent were an Agency within the meaning of the statute, its actions as admitted in paragraph 8 of the Complaint would not be considered a violation of Section 7116(a) of the Statute; in that the sixty (60) day period established in the notification to employees has not yet expired and therefore it has not made any recommendation that the Defense Finance and Accounting Service (DFAS) terminate dues withholding.

Respectfully submitted,

THE OHIO NATIONAL GUARD

s/ CHRISTOPHER STALLKAMP

Christopher Stallkamp

Lieutenant Colonel  
Ohio Air National Guard  
1947 Harrington Memorial Road  
Mansfield, Ohio 44903-8094  
(419) 520-6198

**Certificate of Service**

The undersigned certifies that a true and accurate copy of the foregoing Respondent's Answer to Order Consolidating Cases, Complaint and Notice of Hearing – RE: Case No. CH-CA-17-0336 was duly served upon the following via regular U.S. Mail, first class, postage pre-paid, this 30th day of May 2017:

Sandra LeBold, Regional Director  
Federal Labor Relations Authority  
Chicago Regional Office  
224 S. Michigan Avenue, Suite 445  
Chicago, Illinois 60604-2505

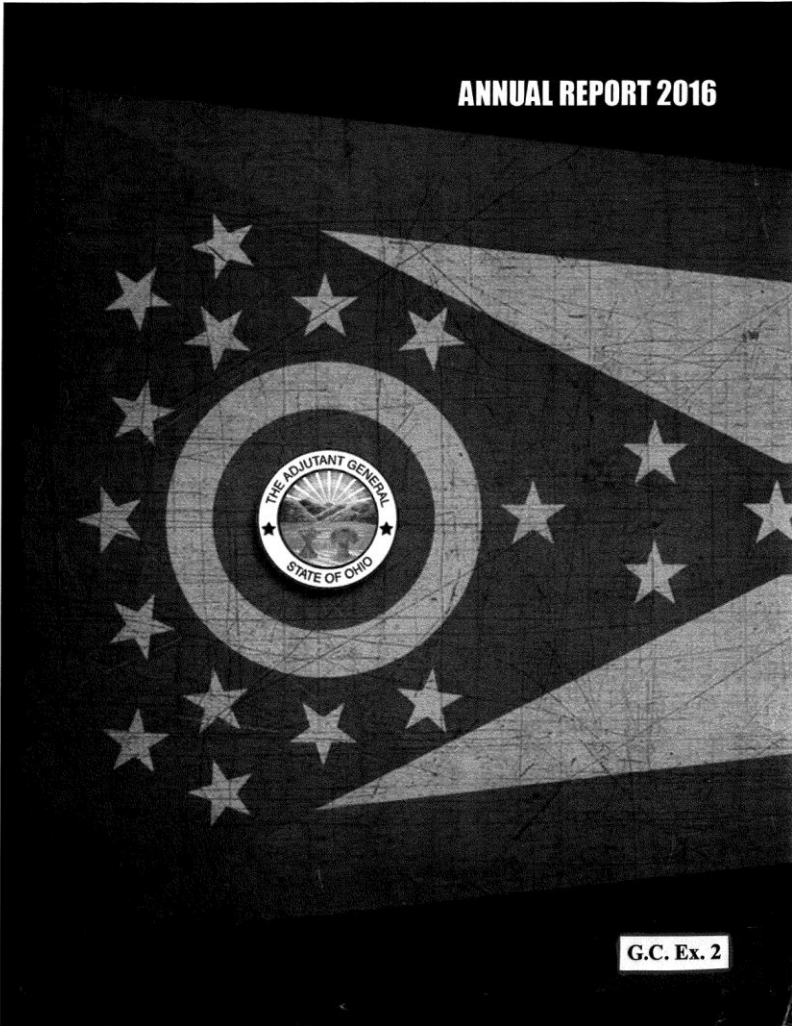
Bill Kudrle  
Associate General Counsel  
AFGE  
80 F Street NW  
Washington, DC 20001

Charles R. Center  
Chief Administrative Law Judge  
Federal Labor Relations Authority  
1400 K Street, N.W., Suite 300  
Washington, DC 20424-0001

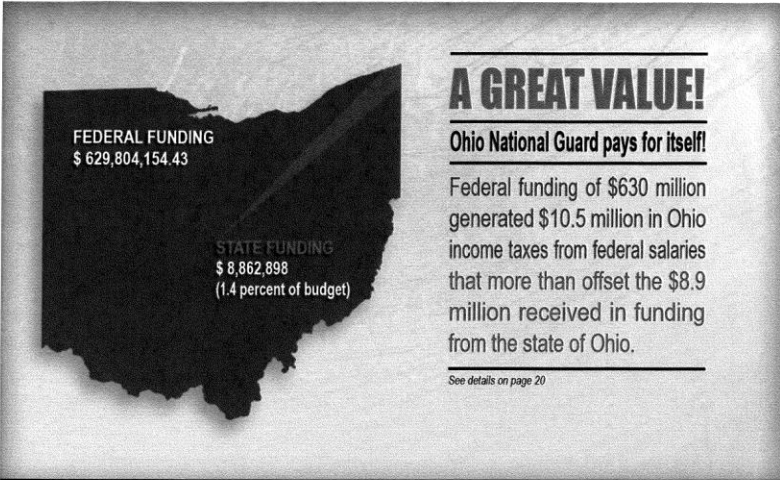
Peter Sutton  
Federal Labor Relations Authority  
1400 K Street, NW., Second Floor  
Washington, DC 20424-0001

s/ CHRISTOPHER STALLKAMP  
Christopher Stallkamp  
Lieutenant Colonel  
Ohio Air National Guard  
1947 Harrington Memorial Road  
Mansfield, Ohio 44903-0179  
(419) 520-6198

**ANNUAL REPORT 2016**



**G.C. Ex. 2**



## A GREAT VALUE!

### Ohio National Guard pays for itself!

Federal funding of \$630 million generated \$10.5 million in Ohio income taxes from federal salaries that more than offset the \$8.9 million received in funding from the state of Ohio.

See details on page 20

## OHIO NATIONAL GUARD *Leadership*

### ARMY



**Major General John C. Harris, Jr.**  
*Commander, Ohio Army National Guard and Assistant Adjutant General, Army*

Responsible for establishing policies, priorities and oversight for the readiness of nearly 11,500 Ohio National Guard Soldiers in six brigade-level major subordinate commands.



**Chief Warrant Officer 5 Jay K. Stuckman**  
*State Command Chief Warrant Officer*

Provides direction, guidance, resources, assistance and supervision of the Ohio Army National Guard Warrant Officer Corps, overseeing warrant officer leader development and mentorship while providing essential advice to the Assistant Adjutant General for Army on warrant officer issues.



**Command Sgt. Major Rodger M. Jones**  
*State Command Sergeant Major*

Serves as the principal enlisted advisor to the Assistant Adjutant General for Army. He observes training and all matters concerning the approximately 10,000 enlisted members of the Ohio Army National Guard and their Families.



**Major General Stephen E. Markovich**  
*Commander, Ohio Air National Guard*

Responsible to the Adjutant General for directing Air National Guard operations and establishing policy to ensure mission readiness of more than 4,800 personnel in four flying wings and six support units.



**Brigadier General Gregory N. Schnulo**  
*Assistant Adjutant General, Air*

Responsible to the Commander of the Ohio Air National Guard for directing the organization's day-to-day operations and administration, and helping establish policy to ensure mission readiness of more than 4,800 personnel in four flying wings and six support units.



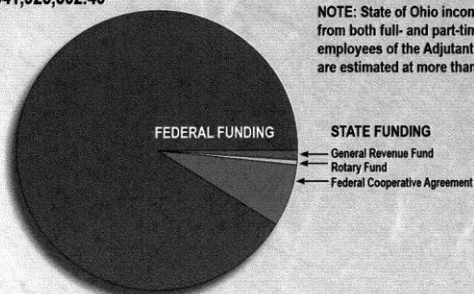
**Chief Master Sergeant Phillip D. Smith**  
*State Command Chief*

Principal enlisted advisor to senior Ohio Air National Guard leadership and is responsible for matters influencing the health, morale and welfare of the organization's assigned enlisted Airmen and their Families.

# OHIO NATIONAL GUARD BUDGET

## TOTAL FUNDS

**\$641,925,802.43**



**NOTE:** State of Ohio income taxes paid on payroll from both full- and part-time military members and employees of the Adjutant General's Department are estimated at more than \$10 million per year.

## FEDERAL FUNDING

October 1, 2014, to September 30, 2015

### Ohio National Guard Air & Army Federal Dollars

#### OHIO ARMY NATIONAL GUARD

Operations and Maintenance .....	\$ 67,167,767.00
Military Construction .....	\$ 273,359.00
Pay and Allowances .....	\$ 232,526,245.00
<b>Total Ohio Army National Guard</b>	<b>\$ 299,967,371.00</b>

#### OHIO AIR NATIONAL GUARD

Operations and Maintenance .....	\$ 49,046,256.97
Military Construction .....	\$ 6,411,147.44
Pay and Allowances .....	\$ 274,379,379.02
<b>Total Ohio Air National Guard</b>	<b>\$ 329,836,783.43</b>

**\$ 629,804,154.43**

\* Included in Federal Funding Numbers

## STATE FUNDING

July 1, 2015, to June 30, 2016

### Ohio National Guard State Dollars

#### GENERAL REVENUE FUND \$ 8,862,898.00

State General Revenue Funds come from state income tax revenues. General Revenue Funds complement federal grants for administration of the Ohio National Guard and provide the minimal amount of administration and facilities management funded fully by the state.

#### ROTARY FUND \$ 3,258,750.00

Rotary funds come from self-sustaining operations of the Ohio National Guard, such as Camp Perry's transient lodging program and range rentals, as well as the sale of Ohio Army National Guard armories and property.

#### FEDERAL COOPERATIVE AGREEMENT\* \$ 45,979,162.00

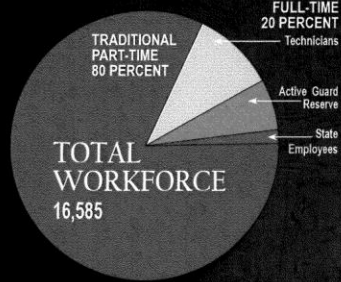
Federal Cooperative Agreement funds are federal dollars that the state manages and disburses.

**STATE/FEDERAL FISCAL CALENDARS**

July 2015	<b>STATE FISCAL YEAR 2016 - July 1, 2015 to June 30, 2016</b>
August 2015	
September 2015	
October 2015	
November 2015	
December 2015	
January 2016	
February 2016	
March 2016	
April 2016	
May 2016	
June 2016	
July 2016	<b>FEDERAL FISCAL YEAR 2016 - October 1, 2015 to September 30, 2016</b>
August 2016	
September 2016	

**WORKFORCE**

As of June 30, 2016



Between drill weekends, annual training periods and deployments, the Ohio National Guard is administered, trained and equipped through the efforts of the nearly 20 percent of our force that makes up the full-time staff. They include federal civil service technicians, federal Active Guard Reserve (AGR) military members and State of Ohio employees. They are the core of the force, ensuring that our traditional drill status Guard members are always ready to serve. The department's full-time workforce is 57 percent federal technicians, 34 percent Active Guard Reserve and 9 percent state employees.

**OHIO ARMY NATIONAL GUARD**

Traditional Guard Members .....	9,999
Federal Technicians .....	683
Federal Active Guard Reserve .....	764
	<b>11,446</b>

**OHIO AIR NATIONAL GUARD**

Traditional Guard Members .....	3,362
Federal Technicians .....	1,153
Federal Active Guard Reserve .....	336
	<b>4,851</b>

**STATE OF OHIO EMPLOYEES**

	<b>288</b>
<b>Total Workforce</b>	<b>16,585</b>

**STATE OF OHIO  
ADJUTANT GENERAL'S DEPARTMENT  
2825 West Dublin Granville Road  
Columbus, Ohio 43235-2789**

AGOH-HRO-LR

28 September 2016

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Collective Bargaining Agreement (CBA)

**1. No Collective Bargaining Agreement (CBA).** The Ohio National Guard has informed Local 3970, American Federation of Government Employees, that the Ohio National Guard is not bound by any provision of the CBA between the parties that expired in 2014.

**2. Federal Services Labor Management Relations Act (FSLMRA), 5 USC Chapter 71.** The Ohio National Guard has also communicated to Local 3970 that it questions the applicability to National Guard Technicians of the statutes in the FSLMRA that have historically underlain the collective bargaining relationship between Local 3970 and the Ohio National Guard. The details of this jurisdictional dispute are unimportant here; but until this dispute is resolved in a satisfactory, new CBA or by some other means, the Ohio National Guard does not consider itself obligated to abide by the FSLMRA.

**3. Guidance.** Pending a new CBA or some definitive determination that the FSLMRA applies to the Ohio National Guard, the interim guidance to supervisors for management of their National Guard Technician workforce is as follows with the understanding that any requirements of the following publication which are dictated either by the expired CSA or by the FSLMRA may be waived at the option



of the Human Resource Office (HRO), on behalf of The Adjutant General.

a. Hiring will continue IAW Technician Personnel Regulation (TPR) 430 and the Ohio National Guard's Merit System Promotion Plan.

b. Compatibility, a statutory requirement, will continue to be governed by TPR 303.

c. Realignment, Reorganization or Reductions in Force will be governed by TPR 351.

d. Awards will be governed by TPR 451 and ONG Policy.

e. Classification will be governed by TPRs 500 and 511.

f. Absence and Leave will be governed by TPR 630.

g. Non-adverse actions will be governed by TPR 715.

h. Disciplinary and adverse actions will be governed by TPR 752 and ONG TPR 752.

i. Pending the creation of a State Alternative Dispute Resolution Plan conforming to CNGBM 0402.01, grievances will be forwarded to the HRO for ad hoc resolution.

4. **Not all-inclusive.** The guidance documents mentioned in para 3 above, are not intended to be all-inclusive; but to be representative of matters formerly the subject of the CBA.

5. **Questions.** Questions should be directed to Duncan Aukland, Labor Relations Specialist, at 614-336-7475.

FOR THE ADJUTANT GENERAL:

s/ WILLIAM K. GIEZIE  
WILLIAM K. GIEZIE, PE, Col, OHANG  
Director of Human Resources

DISTRIBUTION:

A, D

**COLLECTIVE BARGAINING  
AGREEMENT**

**Between**

**The Adjutant General of Ohio**

**and**

**The American Federation of  
Government Employees, Local 3970**

**February 2011-January 2014**



The 2011-2014 Collective Bargaining Agreement between the American Federation of Government Employees Local 3970 and the Ohio National Guard is dedicated to the memory of Colonel(Retired) Dean Boling whose tireless efforts to improve Labor and Management relationships made our partnership possible.

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\* \* \* \* \*

[26-27]



DEPARTMENT OF DEFENSE  
CIVILIAN PERSONNEL  
MANAGEMENT SERVICE  
1400 KEY BOULEVARD  
ARLINGTON, VA 22209-5144

FEB 24 2011

MEMORANDUM FOR THE ADJUTANT GENERAL,  
OHIO NATIONAL GUARD

ATIN: HUMAN RESOURCES OFFICE

COL HOMER C. ROGERS, JR

2825 WEST DUBLIN GRANVILLE ROAD  
COLUMBUS, OHIO 43235-2789

SUBJECT; Negotiated Agreement between the  
Adjutant General, Ohio National Guard and the  
American Federation of Government Employees,  
Local 3970

An initial agreement was executed on December 17, 2010 and reviewed by this office pursuant to 5 U.S.C. § 7114(c). By memorandum dated January 11, 2011, the parties were notified that the agreement was disapproved, as several provisions did not conform to law, rule, or regulation. The parties renegotiated the disapproved provisions and submitted them to this office for review. The renegotiated agreement was executed on January 26, 2011 and reviewed by this office pursuant to 5 U.S.C. § 7114(c). After reviewing the revised provisions, we



find the revised provisions, or deletions, satisfy the negotiability concerns described in our January 26, 2011 disapproval memorandum and are now approved.

The approval of this agreement does not constitute a waiver of or exception to any existing law, rule, regulation or published policy.

This action is taken under authority delegated by DoD 1400.25-M, Civilian Personnel Manual, Subchapter 711, Labor Management Relations. Please annotate the agreement to indicate:

“Approved by the Department of Defense on FEB 24 2011.”

Signed copies of the approved agreement, along with one copy of OPM Form 913B, should be forwarded as follows:

- a. Civilian Personnel Management Service (CPMS)  
Labor and Employee Relations Division  
1400 Key Boulevard, Suite B-200  
Arlington, Virginia 22209-5144
- b. One electronic copy emailed to [labor.relations@cpms.osd.mil](mailto:labor.relations@cpms.osd.mil). An electronic version of OPM Form 913B is available at [http://www.opm.gov/forms/pdf fill/OPM913.pdf](http://www.opm.gov/forms/pdf_fill/OPM913.pdf)
- c. One electronic copy emailed to the National Guard Bureau at: [scott.brinker@us.army.mil](mailto:scott.brinker@us.army.mil).

If there are any questions concerning the agreement, Mr. Lee Alner can be reached on DSN 426-6301 or commercial (703) 696-6301, extension 407.

A copy of this memorandum was served on the labor organization, which is a party to this agreement, by certified mail on FEB 24 2011.

s/ LISA McGLASSON  
Lisa McGlasson  
Acting Chief  
Labor and Employee Relations Division

cc:

Mr. Jeffrey Tanner, President,  
American Federation of Government Employees,  
Local 3970  
P.O. Box 552  
Galloway, OH 43119

National Guard Bureau  
ATIN: NGB-HRL  
1411 Jefferson Davis Highway  
Suite 9100  
Arlington, VA 22202-3231

\* \* \* \* \*

**STATE OF OHIO  
ADJUTANT GENERAL'S DEPARTMENT  
2825 West Dublin Granville Road  
Columbus, Ohio 43235-2789**

**24 January 2014**

**Mr. Jeffrey Tanner  
AFGE local 3970 Chapter President  
P.O Box 152  
Galloway, Ohio 43119-0152**

Re: Expiration of Collective Bargaining Agreement

Dear Mr. Tanner,

As you are aware on 19 July 2012 per Article 19 of the Collective Bargaining Agreement (CBA) the Joint Partnership Council voted on your request to renegotiate and alter the current Collective Bargaining Agreement. A consensus was reached in that meeting to alter the contract and begin collective bargaining negotiations immediately. Subsequently, in the 25 October 2012 JPEC meeting it was announced that the parties had met and scheduled dates of negotiation for ground rules. The parties also agreed that the negotiating teams would consist of a chief negotiator, three primary and three alternate negotiators per team. The parties met and agreed to ground rules on 19 November 2012. Negotiations commenced in January of 2013 and the parties met several times with numerous exchanges of proposals by both parties on all articles of the agreement. Unfortunately we were unable to negotiate new contract language prior to the expiration of the 19 November 2012 ground rules. On 15 October 2013 management offered to simply extend the ground rules in order to continue negotiations. The offer was

rejected. Ground rules negotiations were reopened on 28 October 2013 and 16 December 2013. During the 16 December meeting a mediator from FMCS was present. Unfortunately these efforts were unsuccessful and the parties have been unable to return to the table.

Pursuant to Article XIX of the Collective Bargaining Agreement and notice from the Ohio National Guard (hereinafter "Agency"), the collective bargaining agreement between the Agency and the Union will expire on 24 February 2014.

As you are aware, the Federal Labor Relations Authority has consistently held that upon the expiration of a collective bargaining agreement, either party may elect to no longer be bound by the provisions of the agreement concerning permissive subjects of bargaining. As a result, the parties may refuse to negotiate with regard to permissive subjects. Please consider the Union on notice that it is the Agency's intention not to be bound by certain permissive subjects of bargaining currently included in our CBA. Specifically, the Agency will no longer be bound by or elect to engage in future negotiations over:

Article 1 - Principles of Partnership

Article 2 - Local Partnership Scope of Authority

Article 3 - Methods of Resolving Local Partnership Committee Issues at Impasse

(This also assumes any portion of any article that levies a requirement of the partnership committees)

Article 8 - Details and Temporary Promotions

JPEC Policy Letters - 11-01, 11-02, 11-03, 11-04, 11-05, 11-06 and 11-07.

At this time other permissive subjects of bargaining remain available for discussion. In addition the Agency will continue to honor the requirements of Executive Order 13522. If at any time the Agency determines it is no longer interested in negotiating one of the other permissive subjects of bargaining you will receive notice.

The Agency intends to continue to honor those agreements that are mandatory subjects of bargaining to include the grievance process, seniority, and dues withholding. The Agency will also continue allow those who have been identified as union representatives a reasonable amount of time for representational activities.

The Agency, however, is requesting to bargain over the current official time of the union president. The award of 100% official time was in large part tied to partnership activities. These activities will no longer be required. In addition, the current budgetary status of the Ohio National Guard has changed since the 100% official time was awarded. Finally, the Agency has been forced into a position where additional staff is brought on to accommodate the absence from regular duties of the AFGE local 3970 Chapter President. Please respond in writing to this request to bargain no later than 1600 24 February 2014. If you intend to bargain over this issue please include a proposal for negotiation with that response. If no response is submitted or you do not intend to bargain over this issue, the Agency will allow reasonable official time to the Chapter President for representational functions.

The Agency looks forward to returning to the bargaining table and coming to an agreement on a new collective bargaining agreement as quickly as possible. It is our hope that AFGE will reconsider the Agency's last mediator assisted proposal for ground rules and we can reconvene negotiations.

s/ HOMER ROGERS  
COL Homer Rogers  
Human Resources Officer  
Ohio National Guard

## MEMORANDUM OF UNDERSTANDING

In resolution of Unfair Labor Practice (ULP) CH-CA-16-0077, the Adjutant General of Ohio, Columbus, Ohio (the Agency) and the American Federation of Government Employees (AFGE), Local 3970 (the Union) agree as follows:

1. The amicable settlement of disputes between employing agencies, Federal employees and Federal employee unions is encouraged and contributes to the public interest.
2. The Agency will comply with Article XVI, Grievance Procedures, of the parties 2011-2014 Collective Bargaining Agreement (CBA) until a new Agreement and grievance procedure is negotiated because grievance/arbitration is a mandatory subject of bargaining under the Federal Service Labor-Management Relations Statute.
3. Within two weeks of the parties signing this Agreement, the timeframes for a Performance Grievance on behalf of Kathy Dohrmann will start anew. So, in compliance with Step 1 of the grievance procedure referenced on paragraph 2, Agency will meet, within those two weeks, with the Union as requested on November 17, 2015, to discuss the Performance Appraisal of Kathy Dohrmann. If the grievance is not resolved at Step 1 the Union may proceed to pursue the matter through the formal grievance steps outlined in Article XVI of the 2011-2014 CBA. If the grievance is not resolved, it may, if appropriate under the terms of the CBA, proceed to arbitration.
4. The Agency does not waive or concede any jurisdictional arguments and may raise other

arguments concerning the merits of the grievance before an arbitrator.

5. The Union agrees that the execution of this agreement constitutes a request to the Chicago Regional Director of the Federal Labor Relations Authority to withdraw the above understands that by entering into this Memorandum of Understanding it is withdrawing Unfair Labor Practice Charge Case No. CH-CA-16-0077.

*For the Agency*

s/ D. D. AUKLAND

*Name and title      Date*

Labor Relns Spc

30 MAR 2016

*For the Union*

---

*Name and title      Date*



**MEMORANDUM OF UNDERSTANDING**

In resolution of Unfair Labor Practice (ULP) CH-CA-16-0077, the Adjutant General of Ohio, Columbus, Ohio (the Agency) and the American Federation of Government Employees (AFGE), Local 3970 (the Union) agree as follows:

6. The amicable settlement of disputes between employing agencies, Federal employees and Federal employee unions is encouraged and contributes to the public interest.
7. The Agency will comply with Article XVI, Grievance Procedures, of the parties 2011-2014 Collective Bargaining Agreement (CBA) until a new Agreement and grievance procedure is negotiated because grievance/arbitration is a mandatory subject of bargaining under the Federal Service Labor-Management Relations Statute.
8. Within two weeks of the parties signing this Agreement, the timeframes for a Performance Grievance on behalf of Kathy Dohrmann will start anew. So, in compliance with Step 1 of the grievance procedure referenced on paragraph 2, Agency will meet, within those two weeks, with the Union as requested on November 17, 2015, to discuss the Performance Appraisal of Kathy Dohrmann. If the grievance is not resolved at Step 1 the Union may proceed to pursue the matter through the formal grievance steps outlined in Article XVI of the 2011-2014 CBA. If the grievance is not resolved, it may, if appropriate under the terms of the CBA, proceed to arbitration.
9. The Agency does not waive or concede any jurisdictional arguments and may raise other

arguments concerning the merits of the grievance before an arbitrator.

10. The Union agrees that the execution of this agreement constitutes a request to the Chicago Regional Director of the Federal Labor Relations Authority to withdraw the above understands that by entering into this Memorandum of Understanding it is withdrawing Unfair Labor Practice Charge Case No. CH-CA-16-0077.

*For the Agency*

---

*Name and title      Date*

*For the Union*

s/ JEFFREY TANNER

LOCAL PRESIDENT

21 MARCH 2016

*Name and title      Date*

**UNITED STATES OF AMERICA  
FEDERAL LABOR RELATIONS AUTHORITY  
CHICAGO REGION**

Case No. CH-CA-17-0248  
CH-CA-17-0249  
CH-CA-17-0251  
CH-CA-17-0252  
CH-CA-17-0336

In the Matter of:

**U.S. DEPARTMENT OF DEFENSE  
OHIO NATIONAL GUARD,**

Respondent,

and

**AMERICAN FEDERATION OF GOVERNMENT  
EMPLOYEES, LOCAL 3970, AFL-CIO,**

Charging Party.

The above-entitled matter came on for hearing pursuant to notice, before **RICHARD A. PEARSON**, Administrative Law Judge, at **John W. Bricker Federal Building, 200 North High Street, Room 307, Columbus, Ohio**, on **Wednesday, August 2, 2017**, at **9:00 a.m.**

**APPEARANCES**

**On Behalf of the General Counsel:**

ALICIA WEBER, Senior Attorney  
GREG WEDDLE, Regional Attorney  
U.S. Federal Labor Relations Authority  
224 S. Michigan Avenue, Suite 445  
Chicago, IL 60603  
(312) 886-3465, Ext. 4023

aweber@flra.gov

**On Behalf of the Respondent/Agency:**

LT COL CHRISTOPHER STALLKAMP  
CPT ADAM H. LEONATTI  
Adjutant General's Department, State of Ohio  
2825 West Dublin Granville Road  
Columbus, OH 43235-2789  
(419) 656-3145  
Christopher.a.stallkamp.mil@mail.mil  
Adam.h.leonatti.mil@mail.mil

**On Behalf of the Charging Party:**

WILLIAM R. KUDRLE  
American Federation of Government Employees  
80 F Street, N.W.  
Washington, D.C. 20001  
(202) 639-6424  
Bill.hudrle@afge.org

\* \* \* \* \*

**TESTIMONY OF COL JOHN P. DERNBERGER**

[167-68]

LT COL STALLKAMP: Yes, Your Honor. We're going to call Colonel John Dernberger.

**JUDGE PEARSON: Okay, and let's go off the record. (Off the record.)**

**JUDGE PEARSON: On the record.**

Okay, good morning. If you'd just raise your right hand. (Whereupon,

**COL JOHN P. DERNBERGER**

was called as a witness by and on behalf of the Agency and, after having been first duly sworn, was examined and testified as follows:)

JUDGE PEARSON: Sit down, please, and give us your full name.

THE WITNESS: John Peter Dernberger.

JUDGE PEARSON: You want to spell the last name?

THE WITNESS: Last name is spelled D as in David, e-r-n-b-e-r-g-e-r.

JUDGE PEARSON: Okay. Go right ahead then.

LT COL STALLKAMP: Thank you, Your Honor.

**DIRECT EXAMINATION**

Q. BY LT COL STALLKAMP: Colonel Dernberger, could you state for the record your current duty position?

A. My current duty position, I am the United States Property and Fiscal Officer for the state of Ohio.

Q. How long have you held that position?

A. I was appointed on 1 October 2013, so almost 4 years now.

Q. And your military service, can you give us a little background on your military service record?

A. Okay. Enlisted in 1981, was an enlisted individual for about 5½, 6 years, was commissioned in June of 1986 as an ordinance officer. Served the entire time in the Ohio National Guard. I was an M-Day, a true M-Day officer, up until 1996.

Q. Can you explain what an M-Day officer is?

A. Okay. Bottom line is, an M-Day officer is, for lack of other terms, part time. I had another job with someone else and I drilled on the weekends. I was a standard National Guardsman, I guess you'd want to call it, dual status Guardsman.

Q. And when did you make that switch from an M-Day officer to a full time?

A. In 1996 I made that switch, and hired into the surface maintenance community, working for the Ohio National Guard.

JUDGE PEARSON: So you're now full time with the National Guard?

THE WITNESS: Right, and very -- yeah. When I hired in, I was a Title 32 Federal Technician. So I was a Title 32 Federal Technician until 1 October 2013. On 1 October 2013, I am now on a Title 10 active duty

tour, so I am a Title 10 officer on a 6-year order right now.

\* \* \* \* \*

[175]

A. The issues with the 1187 is when we did the scrub, the review of data, it was identified that there were missing 1187s in the files.

Q. Did you raise that concern with anybody?

A. That was -- yeah, I mean, it was raised with HRO, raised -- yeah, I mean, that's what started the procedure about looking about how to correct this.

Q. Were you involved in that process to determine what needed to be accomplished to correct that?

A. I was on -- I guess I was on the team, if you want to call it, of reviewing the process and making sure that we were -- you know, that what was going to be published was following the DoD FMR and utilizing that as the basis, yes.

\* \* \* \* \*

[179–80]

Q. Okay. In your position as the USP&FO, do you believe that it would have been legal and in compliance with the DoD FMR to essentially turn your head and say no 1187, but we're going to let this roll and have these payroll deductions continue?

A. Could you repeat that question again?

Q. So in your position as the USP&FO, do you believe that it would have been legal and in

compliance with the DoD FMR, which you've testified is mandatory --

A. Right.

Q. -- compliance, to go ahead and continue to allow payroll deductions to take place on individuals that were identified with no 1187 on file through your internal control audits?

A. No.

\* \* \* \* \*

[182-86]

Q. BY MS. WEBER: Good morning. My name is Alicia Weber. I'm an attorney for the Office of General Counsel.

A. Good morning, ma'am.

Q. How you doing? You referred to the Statute in your testimony. Did you mean the Federal Service Labor-Management Relations Statute?

A. The statute I believe I mentioned was the U.S. Statute Code that was talking about the position of the USPFO, Section 708.

Q. So I want to draw your attention to page 11-6 in the Financial Management Regulations.

A. Okay.

Q. And in Section 2-B and 3 there are references to 5 U.S.C. Section 7115(a) and (b).

A. Yes.

Q. Are you familiar with that statute?

A. I've seen them before, yes.



Q. Do you view that as a federal law that you're bound to adhere to?

A. It's written in U.S. Code so yeah, I would think so, yes.

Q. Okay. And I want to have a little better understanding of this audit. You said it was recognized that there were missing documents. How was that discovered, the missing SF 1187s?

A. Just through a normal review. The question came up at some point in the discussion. We said, well, you know, let's check and see if they're there, and through that check, which is a normal process of internal checks and balances, it was recognized that there were missing items.

Q. How did that question come up, do you recall?

A. No, I do not.

Q. And when did this question arise?

A. Like I said earlier in the testimony, this has been a -- there's been a discussion about the collection of union dues and the processes of the 1187s and 1188s for about as long as I can remember.

Q. Okay. And you indicated that it would have been illegal for the Agency to continue to withhold dues from employees if there were no SF 1187s present; that's correct?

A. That's what I said, yes.

Q. And yet you've been aware of this since 2014 or as long as you can remember?

A. We've been looking --

Q. That there were missing SF 1187s?

A. We've been working on this for a long time to get this corrected, ma'am.

Q. But in the interim for the last 2 or 3 or more years, you've continued dues until you started this audit? So in the interim between you discovering that there were no SF 1187s on file for many employees, perhaps the majority of employees, and you conducting the audit several years later, you continued employees' dues deductions, despite knowing that it was illegal?

A. Yes.

JUDGE PEARSON: I was going to say, I think he's taking the Fifth there.

THE WITNESS: It's -- like I said, it's been an ongoing process, okay?

Q. BY MS. WEBER: What led to the decision to do it at this time in 2017; late 2016, early 2017?

A. It became a -- I guess I want to say a correction that had received some priority; that is, to correct this particular issue.

Q. Why?

A. I don't know. I mean, that's one of those things is, in the role I have, I bring these things up and then they get worked on. So here again, I think it's how it evolved through the process and say, hey, this is an ongoing issue that needs to be corrected, and it just happens to be this time, as far as I'm concerned.

Q. Well, who made the decision to do it in late 2016, 2017?

A. The Agency, I guess I want to say, made the -- you know, that's why at the end of the day we had the meetings, talked about the process, and they eventually issued the memo and the policy that is to correct a long-term deficiency.

JUDGE PEARSON: Well, when you said the Agency made the decision, are you referring to the State Adjutant General's Office or the command in Washington for Department of Defense that you answer to?

THE WITNESS: I'm saying the Agency as The Adjutant General's Department. That's why the policy was signed by the HRO.

JUDGE PEARSON: Okay. But so The Adjutant General is the head of that department. Are you aware of whether he himself was involved in making this determination that we're going to force the issue on canceling dues withholding now or was it Colonel Giezie or somebody else or somebody that you're not quite aware of the composition?

THE WITNESS: I worked with the HRO office throughout this process, so I can't speak for what the TAG -- what The Adjutant General's Department, you know, or the TAG himself, had any discussions on. I don't know that.

JUDGE PEARSON: Okay.

MS. WEBER: I don't have anything further.

MR. KUDRLE: Before we get to redirect, I'd like to ask --

JUDGE PEARSON: Okay. Yeah, go right ahead.

**CROSS-EXAMINATION**

Q. BY MR. KUDRLE: Good morning, sir. My name is Bill Kudrle. I represent the Union at this hearing.

A. Good morning, sir.

Q. I just had a few questions for you. So you said that in order to have dues deduction for an employee, they need to have an 1187 on file; correct?

A. Correct.

Q. Is it also correct that in order to start dues deduction an employee needs to submit an 1187?

A. Yes.

Q. And when an employee submits an 1187, who is responsible for maintaining that document?

A. The maintenance of that document should be in the payroll files, within the payroll offices.

Q. So within the Agency?

A. Right, within the Agency.

Q. So if that 1187 is not on file with the Agency, that is as a result of the Agency's failures to maintain it?

A. Could be. I don't know why it's not there.

Q. But it's not on the employee to maintain a copy of that 1187; is that correct?

A. The DoD FMR does not state that.

Q. Okay.

JUDGE PEARSON: Well, what about for any personnel record? I mean, I realize you're not a personnel officer, but every employee has dozens or

hundreds of personnel records relating to him specifically. Employees are not required by law or regulation to maintain copies of every personnel record applying to them, are they?

\* \* \* \* \*

[189-93]

CPT LEONATTI: Objection. I think that's a misstatement, as well.

JUDGE PEARSON: Okay. Well, why don't you just ask him directly instead of asking a leading question. You're entitled to ask leading questions, but sometimes it may get in the way.

Are you aware -- if the Agency has been taking out dues from an employee for years, is there at least a presumption that the employee at some point in the past had submitted an 1187?

THE WITNESS: As an assumption, yes. You could make that assumption, I guess, yes.

JUDGE PEARSON: The Agency doesn't make a habit of starting dues withholding from an employee without an 1187; right?

THE WITNESS: That's right.

JUDGE PEARSON: Okay. Go ahead.

Q. BY MR. KUDRLE: Okay. Just one other question. I was a little unclear about this, but when the issue of 1187s came up and was brought to your attention from the Agency, I believe you said that was -- that came to you as a conversation from the HRO; is that right? Or his office, at least?

A. Yes, his office.

Q. All right. Who in his office specifically?

A. I would say most of those conversations went on between -- it would have been Colonel Giezie and Duncan Auckland.

MR. KUDRLE: No more.

JUDGE PEARSON: Okay. I want to follow up a little bit here. Do you have any rough idea -- I don't need exact numbers, but roughly how many employees at this Agency -- the Agency had copies of 1187s, when you undertook your scrub or audit, whatever it was, to get a better idea of how thorough the recordkeeping was for these dues? So my question here is when you did that study, that scrub, do you have any idea how much approximately 1187s you still had on file?

THE WITNESS: No, I do not. That scrub was done and that information was provided to HRO Daryl Scott, to Major Daryl Scott.

JUDGE PEARSON: Did they have any on file? I mean, were they completely lost, or did they have some but not others, or do you have any rough ideas as to that?

THE WITNESS: My understanding is the Army had a much better handle on current 1187s on file than the Air Guard did. That's what I was told.

JUDGE PEARSON: Could you give the witness a copy of General Counsel Exhibit 24? I don't think he has that in front of him now.

Okay. So we've already had testimony that this exhibit contains lists of employees whose dues, union dues were being withheld on a month-by-month basis

from September 2016 to July of 2017. And so if you look at the first several pages of the document, it's got 1,2,3,4,5,6 -- six pages of names of employees whose dues were being withheld last September. And then you go to the last page and the list of employees whose dues are still being withheld last month take up less than one page.

So without doing an exact count we've got a small fraction of the number of employees who were still having dues withheld compared to last September. And I understand the process that you described at least roughly about allowing employees to correct that, but I guess it would -- it would be accurate, wouldn't it, to say that the employees who are no longer on the list in July who had been having dues withheld last September, all of those employees, the Agency had no 1187s on file for them; is that accurate? Because these were all employees whose dues were being withheld in September and not anymore in July. The only way they would have come off that list -- well, is if they had submitted new 1188s on their own, they had initiated requests to stop the dues withholding, or otherwise there would have been people who came up on the scrub whose 1187s were not in the Agency's files; right?

THE WITNESS: I believe that's correct, sir.

JUDGE PEARSON: Okay. And we've also got a -- if you'd show the witness GC Exhibit 25?

We had testimony that these are the 1188s that had been submitted and processed by the Agency that were actually signed by the employees themselves. There's a whole large number of other employees who had 1188s signed by Captain Scott, but it appears

there were only three employees who submitted 1188s on their own. So would it be correct to say that the vast majority of the employees whose dues withholding has been terminated, that action has been taken because the Agency could no longer find 1187s for them?

THE WITNESS: Yes, or they weren't provided through the process that was built to gain 1187s that were missing.

JUDGE PEARSON: Right. But the only reason that process would have been started for any employee is if the Agency could not find an 1187. They could look at their records and see that they had been deducting dues for however many months or years, and they didn't have an 1187, so they would send notice to the employee saying we either need your old 1187 or we need you to sign a new one. Right?

THE WITNESS: Correct.

JUDGE PEARSON: Okay. And so other than the three employees who initiated 1187s on their own, all the other people would have had their withholding stopped because the Agency advised them we don't have a supporting document 1187 for you; correct?

THE WITNESS: That's correct, sir.

JUDGE PEARSON: Okay. I'm trying to get a grip as to how the Agency could have lost so many documents.

THE WITNESS: I've asked myself the same question, sir.

JUDGE PEARSON: Back -- I mean, it varies from employee to employee, how long that they've been having dues withheld. For some people it may have



only been a few months. Some it may have been 20 years or more. For some of the older employees, longer senior employees, is it likely that when they first filled out an 1187, it was back in the day when the Agency didn't put those kind of records on computer and they would have only had hard copies, or have they -- has the Agency been computerizing these files for a long time?

THE WITNESS: Right now on the Army side of the house, the records are hard copies. We are transitioning to a new payroll system that -- well, its goal is to assist in audit readiness.

JUDGE PEARSON: But even now you're saying that a lot of these records are only stored in hard copies?

THE WITNESS: That is correct.

JUDGE PEARSON: Was there -- I'm not sure because I haven't looked through all the GC exhibits, but do we have an exhibit on file already, a memorandum or some other document, from the Agency regarding a recommendation by the HRO to initiate this process of terminating the dues? Is there anything like that that's in the files now? No?

MS. WEBER: I don't believe so.

\* \* \* \* \*

[197-98]

If you did a similar search of all employees who were having alimony and child support deducted from their paychecks every month, I'd be surprised if there was such a high number of them that you didn't have records for. But maybe that's true, and that's not

really an issue I have to decide, but I do have to deal with the question for the dues allotments, and it just strikes me as an unusually high number of people who have records go missing.

I know in my long experience in the federal government it's not unusual at all for an Agency to lose records. But usually it's very isolated. It's very much the exception, not the rule. And here, for the 1187s, it seems to be the rule, not the exception. And can you give us any insight at all into what was going on over the last 20 years that so many of these things seem to have disappeared?

THE WITNESS: Your Honor, I would only be speculating.

JUDGE PEARSON: Okay. So at least when you started doing this scrubbing, you didn't come up with any information as to why this happened?

THE WITNESS: The questions were asked, you know, why, but I can only speculate on how those many records, you know -- I mean, it's through speculation, because I want to make sure I'm clear on that, you know.

JUDGE PEARSON: Right.

THE WITNESS: Speculating, you know, there has been rules in the past of 6 years 3 months is your normal record retention policy. Speculating, could during normal reviews anything older than 6 years 3 months be removed? And those items might have been pulled.

JUDGE PEARSON: Right.

THE WITNESS: I'm speculating, Your Honor.

JUDGE PEARSON: I understand. I understand. But that's plausible, even though we can't say it's actually the explanation here, but it's a plausible explanation.

THE WITNESS: But I do know for a fact that DFAS and so forth here just -- and it's provided as an exhibit here somewhere, did provide a new -- I think it's dated either March or May of 2017, new retention record policies because of the findings that have been found through audit readiness sampling across the nation. And within the -- that new guidance is there and union dues is in that policy and it basically says, you know, here again, summarizing -- basically says they'll be retained for perpetuity or until that next document is received.

JUDGE PEARSON: Okay.

\* \* \* \* \*

**TESTIMONY OF DUNCAN AUKLAND**

[302-04]

**CROSS-EXAMINATION**

Q. BY MR. KUDRLE: Good afternoon, Mr. Aukland. Remember me, Bill Kudrle?

A. I certainly do.

Q. How you doing today?

A. I'm fine.

Q. I'll have you look at what has been entered as Agency Exhibit 1. Hand you a copy of that.

A. Very well.

Q. I'm going to ask you a question and let you take a few moments to review that.

A. Okay.

Q. So you stated -- I'll ask you, this is the regulation you were citing earlier when you stated that dues cannot be deducted unless there's an 1187 on file?

A. Right.

JUDGE PEARSON: Which exhibit?

MR. KUDRLE: We're on Agency Exhibit 1.

JUDGE PEARSON: Okay.

Q. BY MR. KUDRLE: Take a moment and review that and maybe I'm missing it, but I'm not seeing that requirement.

A. Okay. 110201, sub-paragraph A, "An allotment must be requested in writing by the employee."

Q. Yes, that says must be requested in writing, but does it say anywhere that it needs to be kept on file?

A. Sir, I don't make the audit requirements for the Department of Defense.

Q. Yeah, I'm sorry, but you stated that this required you to or required the Agency to give 1187s on file.

A. It is a requirement that the books be auditable. That is the directive of the Secretary of Defense.

Q. All right. So just to be clear, that's not in this?

A. Let me review further, please. 110202 on page 11-5, Subparagraph A, "Employees must submit a standard Form 1187, request for payroll deductions, to request and authorize the allotment of pay."

Q. Again, that says they must submit it in writing.

A. Okay.

Q. It doesn't state that it must be maintained.

A. You are absolutely correct.

Q. And the employee wouldn't be the one responsible for maintaining that document once it was submitted.

A. I don't disagree with you.

Q. That would be the Agency is responsible for maintaining that.

A. Yes.

Q. And if that's not on file in the Agency's records, then that means the Agency failed to maintain that file.

A. But I want you to understand that the Agency is the United States Property and Fiscal Officer in this case. It is not the Ohio Army National Guard or the Ohio Air National Guard or the Ohio Adjutant General's Department. These records should have been maintained by Colonel Dernberger's shop.

Q. Okay.

A. And he works for the Chief of the National Guard Bureau, not The Adjutant General.

Q. So Daryl Scott though, he works in -- he works for The Adjutant General's Office; correct?

A. Yes, he does.

Q. He stated that when he went to try to find copies of 1187s, he contacted the various branches?

A. Yes.

Q. And the Army itself or the National Guard Army?

A. Yes, he contacted for the Army personnel, he contacted Jan Runyan, who works for the United States Property and Fiscal Officer. And the Air side, he would have contacted the comptroller at each wing, who also works for the United States Property and Fiscal Officer.

Q. So if -- I'm sorry, would you say that one more time?

A. Each comptroller or finance guy, if you want to call him that, at the wings is a Deputy or Assistant United States Property and Fiscal Officer.

Q. And that's who was contacted?

A. Yes.

\* \* \* \* \*

**TESTIMONY OF COL WILLIAM K. GIEZIE**

[374-75]

Q. So I missed that step in there. So after not hearing back from Mr. Dohrmann, you ended up generating an individual -- a letter addressed to each individual who was identified with no 1187s and having dues withheld from their payroll earnings; is that correct?

A. That is correct.

Q. And did you author that letter?

A. I believe I did.

Q. And did that letter establish -- I'm not sure -- I have it marked as Exhibits 5 and 6, but I believe that those numbers changed. General Counsel's --

MR. KUDRLE: Looking at Shawn Rice?

LT COL STALLKAMP: Shawn Rice and I think it's actually Wayble and --

MR. KUDRLE: Wayble is 13.

LT COL STALLKAMP: Judge, I have mine out of order. Can I borrow -- thanks. Thanks, Bill.

Q. BY LT COL STALLKAMP: Showing the witness a document that has been marked as General Counsel Exhibit 13, Colonel Giezie is going to review that document.

A. Mm-hmm.

Q. Okay. Sir, you've had a chance to review that document. Is that a document that you authored?

A. I did.



Q. Okay. And that document was the result of the scrubbing internal review that was done in conjunction with the USP&FO and also with your office in reaching out to the assistant comptrollers of each of the wings; is that correct?

A. This particular one here is an Air Guard individual, so this was after reaching out to the comptrollers at the various wings. What I spoke to earlier was an audit that was conducted between my office and the USPFO on Army Guard Technicians. Once that was completed, we decided we need to take a look at the Air Guard Technicians, so my office engaged with the comptrollers who are assistant USPFO's working for Colonel Dernberger, and we asked them to do the exact same thing. We gave them a list of the Technicians that were having dues deducted from their pay for each respective organization, respective comptroller, and asked them to validate they had SF 1187s on file.

Q. So the goal in both situations was compliance and audit readiness; is that correct?

A. That's correct, and limiting the liability back to The Adjutant General's Department for any erroneous dues that were being deducted from Technicians' pay.

Q. That letter that you authored, did you give Major Scott -- I think it was Captain at the time, but Major now -- did you give him any guidance on how you wanted to ensure that each individual received a notification of that?

\* \* \* \* \*

No. 20-3908

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

THE OHIO ADJUTANT GENERAL'S  
DEPARTMENT, et al.,

Petitioners,

v.

FEDERAL LABOR RELATIONS AUTHORITY,

Respondent.

**FILED**

Jan 28, 2021

DEBORAH S. HUNT, Clerk

ORDER

**BEFORE:** BUSH, Circuit Judge.

The Ohio Adjutant General's Department, Ohio Adjutant General John C. Harris, Jr., and the U.S. Department of Defense/Ohio National Guard petition for review of a decision and order of the Federal Labor Relations Authority ("FLRA") adopting an administrative law judge's findings, conclusions, and recommended order and denying petitioners' objections thereto. The American Federation of Government Employees Local 3970, AFL-CIO ("the Union") moves to intervene on behalf of the FLRA. The FLRA and petitioners do not oppose the motion.

Unless otherwise provided for by statute, a party seeking to intervene in a proceeding for judicial review of an agency order must file a motion to intervene within thirty days of the filing of a petition for review. *See* Fed. R. App. P. 15(d). A motion to intervene must

also include “a concise statement of the interest of the moving party and the grounds for intervention.” *Id.* The Union’s motion to intervene was filed within thirty days of the instant petition for review. The motion also explains that, as the charging party below, the Union has a substantial interest in the outcome of the case. *See Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am., AFL-CIO, Local 283 v. Scofield*, 382 U.S. 205, 208 (1965) (recognizing the right of “the successful charging party ... to intervene in the Court of Appeals proceeding which reviews ... [an agency’s] orders”). The Union also invokes an institutional interest, explaining that it represents the Ohio National Guard and that this case concerns whether this party is an agency within the meaning of 5 U.S.C. § 7103(a)(3).

Accordingly, the motion to intervene is **GRANTED**.

ENTERED BY ORDER OF THE COURT

s/ DEBORAH S. HUNT

Deborah S. Hunt, Clerk