



**National Security and
International Affairs Division**

B-272483

August 23, 1996

The Honorable Russell D. Feingold
The Honorable Herbert Kohl
United States Senate

This letter responds to your request that we review the requirement that National Guard technicians wear military uniforms while performing their civilian job duties at Guard facilities. You asked that we (1) determine the cost to the National Guard of providing uniforms to technicians and (2) obtain the views of Guard and technician union officials regarding the benefits and problems associated with the requirement.

BACKGROUND

Technicians are part of the National Guard's full-time support force. Many work as maintenance and supply personnel, while others hold administrative positions. Their status within the Guard has been described by one court as "quasi-military, quasi-civilian." As technicians, they are federal civilian employees, but most are required, as a condition of their technician employment, to maintain military status in the Guard.¹ As of the end of fiscal year 1995, the Guard employed about 45,000 technicians with dual military-civilian status, including 22,000 in the Army National Guard and 23,000 in the Air National Guard.

Technicians in the enlisted ranks receive an initial issue of military clothing based on their military membership in the National Guard and then receive replacement clothing at government expense through an issue-in-kind system. They are authorized replacement of items rendered unusable due to "fair wear and tear."²

¹When Congress granted federal employee status to technicians in 1968, it also required that technicians maintain membership in the Guard. Some exceptions to the requirement, for example technicians holding low pay positions such as clerk typists, were allowed.

²Except for a small allowance, the government does not pay for uniforms supplied to technicians who are officers or warrant officers.

RESULTS IN BRIEF

We could not determine the cost of supplying military clothing items to technicians. National Guard technicians wear the same uniforms while in technician status that they wear as military members of the Guard. Guard officials regarded the provision of clothing as a "cost of doing business" and have not established record-keeping systems that are capable of tracking replacement cost due to additional wearing of the military uniform during the week.

For more than 20 years, the National Guard's uniform requirement has been the subject of administrative and judicial disputes between Guard management and unions representing technicians. (See app. I.) Guard officials said technicians should be required to wear military uniforms while in technician status because the technicians fill a military role and the uniform promotes military values in the workforce. Technician union representatives opposed the uniform requirement because it constitutes a confusing, unnecessary, and unwelcome intrusion of a military framework into their civilian workplace. However, the requirement for technicians to wear the uniform became federal law with the passage of the fiscal year 1996 National Defense Authorization Act.

COST DATA IS NOT READILY AVAILABLE

Although the National Guard can determine the cost of providing uniforms to Guard members as a whole, the Guard does not separately track the cost of providing military clothing items to its technicians. Moreover, current record-keeping systems make it difficult to extract this data. In seeking to obtain cost data, we encountered the following obstacles:

- Technicians are not issued separate uniforms for their weekday civilian duties and weekend military training duties.
- Records maintained at supply centers do not indicate whether the individual who received clothing was a technician or not.
- Neither the Army nor the Air Force require that an individual's personal clothing record account for clothing issued as replacement items due to fair wear and tear.
- Air National Guard bases have an automated system that documents the distribution of supplies, including clothing. An Air National Guard supply center, at our request, queried the system for clothing issuance data, but the system could not sort the data by individual.

-- Army National Guard supply centers are to retain a voucher file of clothing requisitions submitted by the units they serve. However, the record-keeping system makes it difficult to isolate requisition data for any particular individual. The supply center we visited, for instance, did not have automated records, and manual records were filed according to the month the request was filled.

One of the unions representing technicians provided us with a cost estimate for supplying military uniforms to technicians. Union officials said the estimate was based on their judgment of how much clothing an average technician uses annually. However, they could not provide documentation to corroborate that the estimate reflected actual costs.

GUARD AND TECHNICIAN UNION VIEWS
ON THE UNIFORM REQUIREMENT

Guard and union officials we interviewed generally took opposing views on the need for and desirability of the uniform requirement. The main points these officials raised are summarized in table 1 and discussed further below.

Table 1: Summary of Guard and Union Views Concerning the Uniform Requirement

Issue	Guard viewpoint	Union viewpoint
Military/civilian status	Technicians, although civilians, are primarily military personnel filling a military need; uniform reflects this status.	Technicians are civilian personnel when performing technician duties; uniform does not reflect their status.
Military values and control	Uniform fosters military values and Guard culture.	Uniform enables inappropriate military control of the civilian workforce and hurts morale.
Effect on performance	Uniform does not affect job performance.	Uniform does not affect job performance.
Mobilization role	Uniform serves as a reminder of the technicians' cadre role in mobilizing the Guard.	Everyday wear of the uniform is not critical to fulfilling mobilization duties.
Community presence	Uniformed technicians increase Guard's visibility in their communities.	Community is aware of Guard presence regardless of the uniform requirement.

Military/Civilian Status of Technicians

Union officials stated that technicians are civilians, not military personnel, when performing their technician duties. The Senate Report accompanying the National Guard Technicians Act of 1968, the basis for the current technician program, enumerated three roles for them: (1) perform full-time civilian work in their units; (2) perform military training and duty in their units; and (3) be available to enter active federal service at any time their units are called. Their military and civilian roles should be considered separate from each other, the union officials said. Union officials said that the requirement for technicians to maintain military status ensures that when a Guard unit is mobilized, the unit will continue to have maintenance and support personnel. It does not mean that technician work is military in nature,

officials said. Furthermore, except for the uniform requirement and associated appearance standards, technicians are considered to be civilians while performing their technician duties. For instance, they are not subject to the Uniform Code of Military Justice, nor are they required to perform incidental military duties, officials noted. In addition, union officials said the military rank on the uniform obscures the technicians' civilian grade, which is unfair in cases where the civilian grade is higher.

National Guard officials asserted that technicians are performing military work for a military organization and that the technicians' jobs exist because of a military requirement for a cadre of full-time support personnel. They said the National Guard Technicians Act, as explained in the accompanying Senate Report, was intended primarily to provide uniform health and fringe benefits to technicians. The act endorsed the military nature of the program by requiring most technicians to be military members of the Guard. The requirement to wear the military uniform is consistent with the military mission and status of technicians as stated in the act, Guard officials said.

Military Values and Control

The requirement that technicians wear the uniform fosters military values, according to Guard officials. For instance, the uniform promotes concepts such as military bearing, posture, appearance, character, and discipline. The uniform also preserves the integrity of the military command structure and enhances esprit de corps, Guard officials said. Guard officials are concerned that if civilian attire is permitted, technicians would be less likely to remain militarily fit and would be more prone to question orders from their supervisors, resulting in a breakdown in discipline. Guard officials also said technicians act as role models and trainers for the part-time personnel in their unit; therefore, they should maintain a military demeanor.

Technicians must comply with Army and Air Force appearance standards associated with wearing the uniform. Service regulations make an explicit link between the appearance of military personnel and military discipline. According to Army regulations, a

"neat and well-groomed appearance by soldiers is fundamental to the Army and contributes to building the pride and esprit essential to an effective military force Personnel must project a military image that leaves no doubt that they live by a common military standard and are responsible to military order and discipline."

Similarly, Air Force regulations state that military personnel are required "to adhere to higher standards than normally found in civilian life. . . . When wearing the uniform, all Air Force members are responsible for adhering to standards of neatness, cleanliness, safety, and military image to provide the appearance of a disciplined Service member."

A technician union said the uniform enables the Guard to exert military control over technicians. Its position is that such control is inappropriate for a civilian workforce. Technicians generally have the right to bargain about their working conditions and to pursue grievances concerning violations of their employment rights, officials said. The union said that although this condition does not give technicians a license for insubordination (a disciplinary offense), it illustrates a supervisor-subordinate relationship during technician employment that is different from a military relationship. Further, supervisors can abuse their ability to exert military control, they said. One union representative, for instance, claimed that managers have used their military rank to intimidate lower-ranking technicians into not filing grievances. The uniform can also lead to confusion over their civilian status and confrontations with nontechnician uniformed personnel. Technicians said they sometimes find themselves explaining that they are civilians and therefore not required to follow military orders. Union representatives also said technicians are proud of their technician work and do not need to wear the uniform to enhance esprit de corps. In fact, they believe most technicians oppose the uniform requirement; consequently, the requirement serves to damage, not boost, morale. Guard officials disputed the union's view that most technicians oppose the requirement. At the time of our field work, neither the union nor the Guard had surveyed technicians on the issue.

Effect on Job Performance

Union and Guard officials agreed that the military uniform does not affect technicians' work performance. Union officials pointed out that technicians employed by the Air Force Reserve and Army Reserve do essentially the same work and are not required to wear the military uniform. Guard officials reiterated that they place great importance on the military values fostered by the uniform.

Role in Mobilizing the Guard

According to Guard officials, technicians are critical to the Guard's ability to rapidly mobilize for a federal or state mission. They constitute a full-time cadre of personnel who are readily available should the need arise. The uniform reminds technicians of this role and allows them to mobilize quickly. The Guard has argued

that eliminating the uniform requirement could undermine the preparedness of the Guard and its usefulness in an emergency.

Union representatives said technicians are aware of their role in mobilizing the Guard and do not need to wear the uniform to remind them of this. They said that, historically, technicians have worn civilian attire during times of military crises, riots, and natural disasters without any impairment to their mobilization or units' missions. Furthermore, the Guard unit they belong to may not be collocated at their technician workplace. In these cases, union representatives said, technicians are in the same position as the part-time members of their unit. All the members of the unit would have to travel from their place of employment to their unit's mobilization station. Officials also pointed out that the technicians' workplace often contains facilities that could be used to store a military uniform, thereby permitting technicians wearing civilian attire to quickly change into their military uniform.

Presence in the Community

In addition to its federal role, the National Guard provides state governments with military units that are trained to protect life and property and to preserve peace, order, and public safety under the command of state authorities. According to Guard officials, technicians are the daily representation of the Guard in their contacts and associations in the communities in which they serve. The uniform furnishes highly visible evidence of the National Guard in the local community. Union officials, in contrast, said local citizens would be aware of the Guard presence regardless of their wearing the uniform. Moreover, some base policies restrict personnel to wearing the uniform only while traveling to and from the base and while performing their work at the base, they said. Also, union officials said that it is recruiters, rather than technicians, who are highly visible in the communities because of their presence in the local shopping malls and schools. In addition, the uniform is identical to that worn by active-duty personnel. Nothing on it indicates that the person wearing it is a member of the Guard.

Other Issues

-- Guard officials told us that the uniform enhances base security by providing an initial visual screen of who should or should not be in a restricted area. Union officials contended that access on bases is controlled through the use of identification badges, not the clothing worn by individuals. Also, they said that uniforms can be purchased at surplus stores, thereby negating the impact on security.

- Union officials said the battle dress uniform issued to technicians in maintenance positions is unsafe for work around machinery because it is loose-fitting and has many pockets and buttons. Guard officials said the uniform is safe and is the same uniform worn by active-duty military personnel. Moreover, they said technicians performing maintenance work usually strip down to their t-shirt or wear coveralls.
- Guard officials said the uniform promotes formality in how technicians address one another. Civilian attire, they said, could lead to undue familiarity, which could have negative consequences when the unit is activated. Technician union representatives said that technicians already address each other on a first-name basis. They said that technicians work together as a family; they respect each other, not because one's rank is higher, but because respect has been earned.

DEPARTMENT OF DEFENSE AND UNION COMMENTS

In commenting on a draft of this report, the Department of Defense said that it generally agreed with the information presented. It provided technical and clarifying comments, which have been incorporated in the report.

One of the technician unions commented that the report was incomplete without information on the cost of supplying military uniforms to technicians. The union said that if Defense or the National Guard Bureau could not supply cost data it was incumbent upon us to determine cost. During our field work, we explored the feasibility of using a statistical sample of clothing records to collect cost data. However, because of the limitations of the National Guard's record-keeping system, we concluded that it (1) was not possible to collect the data for the Air National Guard and (2) would be too resource-intensive to collect the data for the Army National Guard. The union said that Defense and the National Guard Bureau's inability to determine the cost of technician uniforms suggested a serious flaw in the process for making budget projections and appropriations requests. We disagree. The agency is able to identify the cost of providing military uniforms to Guard members in the aggregate. And, because the Guard regards the provision of clothing for technicians as a "cost of doing business," its decision not to separate the cost of uniforms for technicians from the cost of uniforms for other Guard members seems reasonable.

Even though a survey has not been conducted, union representatives said this does not mean that the view of the majority of technicians is unknown. Many technicians opposed to the uniform requirement are veterans of World War II or the Korean or Vietnam conflicts, officials said. And, when technicians have been allowed to wear

civilian attire in the past, they have chosen to do so. Subsequent to our field work, a union chapter in one state surveyed 100 technicians regarding the uniform requirement. Seventy-five of 86 respondents said that the uniform requirement should be a negotiable issue, officials said. Nevertheless, the magnitude of union members holding this view remains undocumented. Technical and clarifying comments provided by the unions have been incorporated in the report.

SCOPE AND METHODOLOGY

We interviewed officials at Army National Guard and Air National Guard headquarters to determine whether the costs of providing uniforms to technicians were tracked or could be extracted from existing record-keeping systems. We also met with Maryland National Guard officials and visited their clothing supply centers to observe how the Guard's record-keeping systems were being implemented at the state level.

We discussed the benefits the National Guard derives from the uniform requirement with officials at the National Guard Bureau, the Army National Guard, and the Air National Guard. Among the officials we met with were the Assistant Chief of the National Guard Bureau, the Deputy Director and Personnel Director of the Army National Guard, and the Assistant Deputy Director of the Air National Guard. To obtain the union perspective, we interviewed officials of two technician unions--the Association of Civilian Technicians and the National Federation of Federal Employees--and participated in an open forum discussion with representatives from several chapters of the Association of Civilian Technicians.

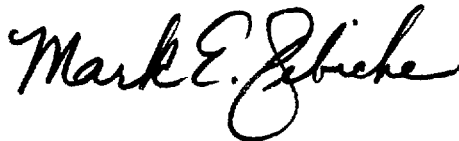
We performed our work from March to June 1996 in accordance with generally accepted government auditing standards.

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As agreed with your staff, unless you publicly announce this report's contents earlier, we plan no further distribution until 2 days from its issue date. At that time, we will send copies to the Chairmen of the Senate Committee on Armed Services and House Committee on National Security; the Secretaries of the Army and the Air Force; and the Chief, National Guard Bureau. Copies will also be made available

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to others on request. If you or your staff have any questions concerning this letter, please call me on (202) 512-5140. Major contributors to this letter were Charles Bonanno and Thomas Gosling.

A handwritten signature in black ink that reads "Mark E. Gebicke". The signature is written in a cursive style with a large, prominent initial "M".

Mark E. Gebicke
Director, Military Operations and
Capabilities Issues

ADMINISTRATIVE AND JUDICIAL DECISIONS
REGARDING THE UNIFORM REQUIREMENT

The requirement that technicians wear military uniforms has been the subject of labor-management disputes for more than 20 years. It has been adjudicated by the Federal Labor Relations Council; its successor organization, the Federal Labor Relations Authority; and the federal courts. Several of these cases have been narrowly focused on whether the Guard must negotiate over the uniform requirement or may keep it off the bargaining table. However, in some cases, the merits of the uniform requirement have been considered.

Congress included a provision in the fiscal year 1996 National Defense Authorization Act (P. L. 104-106, section 1038) requiring technicians to wear the uniform except as prescribed by the Secretary. The law also stated that uniform allowances intended for civilian federal employees were no longer applicable to National Guard technicians. In the preceding years, technician unions in several states had won the right through the collective bargaining process to either an annual \$400 uniform allowance or to additional uniforms valued at \$400. Under the act, technicians will continue to receive uniforms by virtue of their military status in the Guard.

The following administrative and judicial cases preceded the fiscal year 1996 legislation mandating the wearing of the uniform.

TECHNICIANS GIVEN FEDERAL COLLECTIVE BARGAINING RIGHTS

Congress established the current National Guard technician program with the passage of the National Guard Technicians Act of 1968. The purpose of the act was to provide the technicians with a consistent retirement and fringe benefit package, recognize their military and state nature, and clarify their legal status. Prior to that time, their employment status was uncertain and many were not covered by a retirement program. Technicians were also now permitted to join a federal employee union and engage in collective bargaining.

In addition to providing technicians the benefits of federal employee status, the act was intended to recognize the military requirements and state characteristics of the Guard. It granted state officials (the adjutants general) administrative authority over the technician workforce. However, neither the act nor the legislative history addressed the issue of whether technicians should be required to wear military uniforms.

Soon after the National Guard Technicians Act went into effect in 1969, the Army and Air Force issued regulations requiring technicians to wear military uniforms. The Chief of the National Guard Bureau subsequently attempted to dispel "doubts, misconceptions, or confusion" regarding the uniform requirement. In a memorandum to the adjutants general, he reiterated the importance of the requirement and directed them to implement it except when specific conditions warranted deviation from it.

COURTS UPHOLD THE NATIONAL GUARD'S RIGHT TO IMPLEMENT THE UNIFORM REQUIREMENT

During the 1970s, technicians challenged the uniform requirement, but the federal courts generally upheld the Guard's right to implement it. In one case, for instance, a District Court judge stated:

"Weighing the testimony submitted by both sides, the Court might conclude that the wearing of the uniform was on balance, undesirable. However, it is not the Court's function to substitute its decision for that of the lawfully designated Governmental authority to which is delegated the regulation of the National Guard." Bruton v. Schnipke, 404 F. Supp. 1157, 1163 (1975).

The judge continued:

"The National Guard is a military organization. Its functions are primarily military. The reason for its existence is primarily military. All of the testimony supports the conclusion that technicians function in a more military fashion if they wear the military uniform. Indeed, it is because wearing the uniform requires plaintiffs [the technicians] to perform their work in a military way that they object. It does not seem unreasonable to have military work performed in a military manner." 404 F. Supp. at 1163.

In a related opinion, the judge held that the civilian employee status of technicians did not change the essential military function of their jobs. The judge stated:

"In view of the military aspects of the technicians' job, the statutory requirement that they be active members of the National Guard and the fact that their work is under the control of the military, the [uniform] regulation bears a rational relation to the National Guard purpose." Bruton v. Schnipke, 404 F. Supp. 1032, 1034, (1975).

In a later case, a District Court judge stated that the critical issue was whether the technicians' activities during the week were a proper subject of military decision and control. If they were, then the court was precluded from reviewing the correctness of the military decision to promulgate the regulation. The judge said he could not agree with the technician who brought the complaint that a clear distinction could be made between technicians' civilian and military duties:

"Considering the clear interrelationship between technicians' duties and the effective functioning of the Guard in conjunction with the statutory requirement that all technicians as a condition of employment be active members of the Guard, I conclude it is rational, not unconstitutional, for the Guard to establish standards of appearance for technicians." Klotzbach v. Callaway, 473 F. Supp. 1337, 1342 (1979).

TECHNICIANS WIN, THEN LOSE, RIGHT TO NEGOTIATE OVER THE ISSUE

Technician unions had more success in seeking to make the uniform requirement a negotiable issue during collective bargaining. The Guard believed it was within its rights as management to keep the issue off the bargaining table. But the Federal Labor Relations Council ruled that the issue was negotiable because the Guard had not shown that the uniform was essential to the accomplishment of its mission. In a 1977 decision, the Council held that

- there was no functional relationship between the day-to-day work performed by technicians and the requirement to wear the military uniform,
- the existence of a "rational basis" for the uniform requirement did not mean the requirement was necessary, and
- the Guard had presented no evidence to support its contention that unit readiness had suffered as a result of technicians wearing attire other than the military uniform. See FLRC No. 76A-16 (and other cases consolidated therewith).

This ruling opened the door to negotiations over the issue, and technicians subsequently won the right to wear civilian attire through the collective bargaining process. By 1983, 60 bargaining units had won the right to wear civilian attire.

The union victories came to a halt in 1984, when the Federal Labor Relations Authority ruled that wearing the uniform constituted a "methods and means" of performing work as

defined by the Federal Service Labor-Management Relations Statute.¹ The ruling meant that management could elect not to negotiate over the issue. The Authority cited previous court cases that found an interrelationship between the duties performed by technicians and the ability of the Guard to maintain combat readiness, an interrelationship that provided a rationale for the uniform requirement. The Authority stated:

"In the instant case, the record shows that the National Guard Bureau uses the requirement for civilian technicians to wear the military uniforms to foster military discipline, promote uniformity, encourage *esprit de corps*, increase the readiness of the military forces for early deployment and enhance identification of the National Guard as a military organization." 15 FLRA No. 65, p. 6.

As further support for its position, the Authority further stated that

- the Guard's ability to mobilize its part-time force depends on the full-time technician workforce;
- because technicians are already in uniform, unit commanders have them available for instant deployment in response to any disaster or civil assistance request;
- the uniform is indispensable as a constant reminder to technicians that they are members of an organization that is essentially military and subject to immediate mobilization; and
- the uniform promotes a more realistic military environment, which is necessary for training part-time Guard members. 15 FLRA 65, p.7.

The Guard also presented the issue of internal security as a rationale for keeping the uniform issue off the bargaining table. For example, it argued before the Federal Labor Relations Authority in 1986 that negotiating over the issue interfered with management's rights to determine its internal security procedures, as provided in the Federal Service Labor-Management Relations Statute (21 FLRA No. 124). Protecting the base in question, along with the facility's aircraft and weapon systems, would be difficult absent a requirement that technicians wear the military uniform, the Guard stated. When wearing

¹The Federal Service Labor Relations Act, (5 U.S.C. 7101 et seq.), went into effect in January 1979. The statute, among other things, created the Authority as an independent agency to replace the Federal Labor Relations Council and to administer the federal labor relations program.

the uniform, technicians are easily identifiable and more quickly mobilized for security purposes, while those not wearing the uniform are more quickly and easily identified as being in the wrong place.

The Authority agreed with the Guard, stating that the uniform requirement was rationally related to the Guard's stated internal security needs. Thus, the issue was found to be nonnegotiable. However, a U.S. Circuit Court of Appeals reversed the Authority's decision in 1994. The court found that the provision of the statute regarding the methods and means of performing work took precedence over the provision giving management the right to determine its internal security needs. In a 1995 case unrelated to National Guard technicians, the Authority considered the relationship between these two provisions of the statute and agreed with the court's opinion.

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