

# United DoD Workers Coalition

August 5, 2005

Nat'l Assn. of Aeronautical  
Examiners

Nat'l Air Traffic Controllers Assn.

Professional Airways Systems  
Specialists

Antilles Consolidated Education  
Assn.

Int'l Brotherhood of Boilermakers

Assn. of Civilian Technicians

Communications Workers of  
America

Federal Education Assn./NEA

Int'l Brotherhood of Electrical  
Workers

Nat'l Federation of Federal  
Employees

Fairchild Federal Employees Union

American Federation of Gov.  
Employees

Nat'l Assn. of Gov. Employees

Int'l Guard Union of America

Int'l Assn. of Fire Fighters

Hawaii Council of Defense  
Commissary Unions

Laborers' Int'l Union of  
North America

Int'l Assn. of Machinists and  
Aerospace Workers

Nat'l Marine Engineers Beneficial  
Assn.

Int'l Organization of Masters,  
Mates & Pilots

Metal Trades Dept., AFL-CIO

American Nurses Assn.

United American Nurses

Int'l Union of Operating Engineers

Int'l Union of Painters and Allied  
Trades

United Assn. of Journeymen and  
Apprentices of the Plumbing &  
Pipe Fitting Industry of the U.S.  
and Canada

United Power Trades Org.

Int'l Federation of Professional and  
Technical Engineers

Retail, Wholesale, and  
Department Store Union

Seafarers Int'l Union

Service Employees Int'l Union

Sport Air Traffic Controllers

American Federation of State,  
County and Municipal Employees

American Federation of Teachers

Int'l Brotherhood of Teamsters

Int'l Assn. of Tool Craftsmen

Honorable Gordon England  
Acting Deputy Secretary of Defense  
1010 Defense Pentagon  
Washington DC 20301-1010

Dear Secretary England:

Your July 14, 2005, letter states, “the proposed regulations ensure that a variety of issues remain subject to collective bargaining.” We have a simple request—name one. Give us one example of an issue that the proposed regulations “ensure” will remain subject to collective bargaining.

With respect to the issue you name, please answer the following question: what prohibits the Secretary from eliminating collective bargaining of that issue by promulgating a regulation that specifies all employee conditions of employment on that subject? Section 9901.917(d)(1) of the proposed regulations states, “Management may not bargain over any matters that are inconsistent with . . . Department or Component policies, regulations, or similar issuances.” What in the proposed regulations prohibits the Department from prescribing by “issuance” any or all conditions of employment on the subject you name—thereby precluding, under § 9901.917(d), any bargaining inconsistent with the prescribed conditions?

We find in the proposed regulations no limit at all on the working conditions that the Secretary may unilaterally prescribe through “policies, regulations, or similar issuances.” Your former colleague, Charles Abell, made it very clear to us during the meet and confer process that the proposed regulations contain no limit on the matters that may be prescribed by “issuance” and thereby wiped off the bargaining table. If Mr. Abell was wrong and there is such a limit, please tell us what it is and where in the proposed regulations we can find it.

If Mr. Abell was right, however, and there is no such limit, then it follows that your July 14 letter is wrong. If there is no limit on the working conditions that may be prescribed by Departmental or Component-wide “issuance” and thereby removed from bargaining, then it follows that the proposed regulations do not “ensure” that any issue will remain subject to collective bargaining. Rather, the proposed regulations totally eliminate any statutory right to bargaining, by permitting the Department to eliminate any or all bargaining by “issuance.”

(List in-formation)

The foregoing is central to what your July 14 letter calls our differing views on the scope of bargaining. The June 15 paper that we presented to you cited § 9901.917(d)(1) and made the same point we have noted above. Your July 14 letter, however, does not cite or quote any provisions to support your assertion that “the proposed regulations ensure that a variety of issues remain subject to collective bargaining.” If you still maintain that this assertion in your July 14 letter is correct, then please support your view with pertinent citation, quotation, and explanation.

On another matter, your July 14 letter states:

We need to continue to work together to ensure success in designing and implementing NSPS. While there are still areas where our views differ, there are also areas where the DoD/OPM team has recommended changes to the proposed regulations that address concerns or suggestions that have been raised by employee representatives.

Apart from your general statement on scope of bargaining discussed above, however, your July 14 letter identifies none of the areas where your views continue to differ from ours and none of the changes that will be made in response to our suggestions and concerns. On pages 13 through 16 of our June 15 paper, we presented specific views concerning the proposed regulations’ unlimited expansion of management rights to include “whatever actions may be necessary,” limitation of “procedures” negotiation, elimination of all but illusory “arrangements” negotiation, creation of a labor board lacking independence, and delay and restriction of independent review in discipline cases. Attorney Mark Roth raised additional specific concerns during our June 16 meeting. Your July 14 letter addresses none of these matters.

If we are “to continue to work together to ensure success in designing and implementing NSPS,” then we need to receive your specific responses to the issues we raised in our June 15 paper and during our June 16 meeting. On which of these matters do our views still differ? On which do you now agree changes in the proposed regulations should be made?

Finally, your July 14 letter provides no specific responses to the Union Coalition proposals discussed on pages 6-11 of our June 15 paper, the full texts of which were delivered to your staff and are available on the Coalition’s website. Please tell us in what respects, if any, specific terms of our proposals are inadequate or incomplete.

We look forward to receiving your response, so that we may continue to work together to change the Department’s proposed NSPS regulations and seek agreement on as many final regulatory provisions as possible.

Sincerely,

Byron W. Charlton  
Chairman, UDWC