

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN FEDERATION OF GOVERNMENT :  
EMPLOYEES, AFL-CIO :  
80 F Street, N.W. :  
Washington, DC 20001, :

and :

METAL TRADES DEPARTMENT, AFL-CIO :  
888 16th Street, N.W., Suite 690 :  
Washington, DC 20006, :

and :

NATIONAL FEDERATION OF FEDERAL :  
EMPLOYEES, FD-1, IAMAW, AFL-CIO :  
1016 16<sup>th</sup> Street, N.W. :  
Washington, DC 20036, :

and :

ASSOCIATION OF CIVILIAN :  
TECHNICIANS, INC. :  
12620 Lake Ridge Drive :  
Lake Ridge, VA 22192, :

and :

NATIONAL ASSOCIATION OF :  
GOVERNMENT EMPLOYEES, SEIU, AFL-CIO :  
159 Burgin Parkway :  
Quincy, MA 02169 :

and :

UNITED POWER TRADES ORGANIZATION :  
942 Prune Orchard Rd. :  
Colfax, WA 99111, :

and :

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Case No. \_\_\_\_\_

**CASE NUMBER 1:05CV00367**

**JUDGE: Emmet G. Sullivan**

**DECK TYPE: Administrative Agency Review**

**DATE STAMP: 02/23/2005**

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INTERNATIONAL FEDERATION OF  
PROFESSIONAL & TECHNICAL ENGINEERS  
8630 Fenton Street, Suite 400  
Silver Spring, MD 20910,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS  
25 Louisiana Avenue, N.W.  
Washington, DC 20001,

and

LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA  
905 16th Street, N.W.  
Washington, DC 20006,

and

INTERNATIONAL ASSOCIATION OF FIRE  
FIGHTERS  
1750 New York Avenue, N.W.  
Washington, DC 20006,

Plaintiffs,

v.

DONALD H. RUMSFELD, SECRETARY OF  
DEFENSE, in his official capacity  
1000 Defense Pentagon  
Washington, DC 20301-1000,

and

DAN G. BLAIR, ACTING DIRECTOR, in his  
official capacity  
United States Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415-1000

Defendants.

## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, ten labor organizations that represent over 300,000 employees of the United States Department of Defense, seek declaratory and injunctive relief addressing defendants' failure to abide by the requirements of 5 U.S.C. § 9902(m)(3) in developing a labor relations system for the Department of Defense.

### **JURISDICTION**

1. This Court has jurisdiction under 28 U.S.C. § 1331.

### **VENUE**

2. Venue is proper in this Court under 28 U.S.C. § 1391(e).

### **PARTIES**

#### ***Plaintiffs***

3. Plaintiff American Federation of Government Employees, AFL-CIO (AFGE), is an unincorporated association having its headquarters at 80 F Street, N.W., Washington, D.C. 20001. AFGE is an exclusive bargaining representative of federal employees, including DoD employees, totaling approximately 600,000 federal employees and 200,000 DoD employees respectively. AFGE represents the interests of its members and bargaining units by, *inter alia*, negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. AFGE brings this action on behalf of itself and its members.

4. Plaintiff Metal Trades Department, AFL-CIO (MTD) is an unincorporated association having its headquarters at 888 16th Street, N.W., Suite 690, Washington, D.C. 20006. The MTD is a department of the AFL-CIO with 17 national and international union affiliates

whose combined membership total over 5,000,000. The MTD, and its affiliated Metal Trades councils, are the exclusive bargaining representative of over 40,000 employees at DoD and its various missions. In that capacity, the MTD and its Metal Trades councils represent the interests of their members and bargaining units by, *inter alia*, negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. The MTD brings this action on behalf of itself, its Metal Trades councils, affiliates and members.

5. Plaintiff National Federation of Federal Employees, FD-1, IAMAW, AFL-CIO (NFFE), is an unincorporated association having its headquarters at 1016 16th Street, N.W., Washington, D.C. 20036. NFFE is an exclusive bargaining representative of federal employees, including DoD employees, totaling approximately 65,000 federal employees and 37,000 DoD employees respectively. In that capacity, NFFE represents the interests of its members and bargaining units by, *inter alia*, negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. NFFE brings this action on behalf of itself and its members.

6. Plaintiff Association of Civilian Technicians, Inc. (ACT) is a non-profit corporation having its headquarters at 12620 Lake Ridge Drive, Lake Ridge, Virginia 22192. ACT and its councils and local chapters are the exclusive bargaining representatives of certified federal employee bargaining units in over forty jurisdictions. These units include a nationwide majority of DoD employees who are National Guard technicians employed under 32 U.S.C. § 709. In that capacity, ACT and its councils and local chapters represent the interests of their

members and bargaining units by, *inter alia*, negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. ACT brings this action on behalf of itself and its councils, chapters, and members.

7. Plaintiff National Association of Government Employees, SEIU, AFL-CIO (NAGE) is a non-profit corporation incorporated in the State of Delaware and having its headquarters at 159 Burgin Parkway, Quincy, Massachusetts 02169. NAGE is the exclusive bargaining representative of 65,000 federal employees, including about 35,000 DoD employees. In that capacity, NAGE represents the interests of its members and bargaining units by, *inter alia*, negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. NAGE brings this action on behalf of itself and its members.

8. Plaintiff United Power Trades Organization (UPTO) is an unincorporated association having its headquarters at 942 Prune Orchard Road, Colfax, Washington 99111. UPTO is the exclusive bargaining representative of approximately 620 federal employees of The US Army Corps of Engineers Northwestern Division Pacific Region, a component of DoD. In that capacity, UPTO represents the interests of its members and bargaining units by, *inter alia*, negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. UPTO brings this action on behalf of itself and its members.

9. Plaintiff International Federation of Professional and Technical Engineers (IFPTE) is an unincorporated association having its headquarters at 8630 Fenton Street, Suite 400, Silver Spring, MD 20910. IFPTE and its local affiliates are the exclusive bargaining representative of employees in certified federal bargaining units within the DoD and throughout the federal workforce. In that capacity, the IFPTE and its locals represent the interests of its members and bargaining units by, *inter alia*, negotiating collective agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. IFPTE brings this action on behalf of itself, its locals and its members.

10. Plaintiff International Brotherhood of Teamsters (IBT) is an unincorporated association having its headquarters at 25 Louisiana Avenue, N.W., Washington D.C. 20001. IBT local affiliates are the exclusive bargaining representative of employees in certified federal bargaining units within the DoD and throughout the federal workforce. In that capacity, the IBT and its locals represent the interests of its members and bargaining units by, *inter alia*, negotiating collective agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. IBT brings this action on behalf of itself, its locals and its members.

11. Plaintiff Laborers' International Union of North America (LIUNA) is an unincorporated association having its headquarters at 905 16<sup>th</sup> St., NW, Washington, D.C. 20006. LIUNA represents employees in the private and public sectors with a membership of approximately 880,000. LIUNA represents approximately 20,000 Federal employees with 9,000

working within the Department of Defense. In that capacity, LIUNA represents the interests of their members and bargaining units by, *including but not limited to*, negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. LIUNA brings this action on behalf of itself, its affiliates and members.

12. Plaintiff International Association of Fire Fighters (IAFF) is an unincorporated association representing approximately 260,000 fire fighters, paramedics/EMTs, and emergency response personnel and has its headquarters at 1750 New York Avenue, N.W., Washington, DC 20006. IAFF and its local affiliates are the exclusive bargaining representatives of approximately 3,500 employees in certified federal bargaining units within the Department of Defense and elsewhere in the federal workforce. In that capacity, IAFF and its locals represent the interests of its members and bargaining units by, *inter alia*, negotiating collective bargaining agreements, arbitrating grievances under such agreements, filing unfair labor practice charges, lobbying Congress for favorable working conditions, pay and benefits, and litigating employees' collective and individual rights in federal courts. IAFF brings this action on behalf of itself, its locals, and its members.

### ***Defendants***

13. Defendant Donald Rumsfeld is the Secretary of Defense, and, as such, exercises authority, direction and control over the DoD, which is a cabinet level agency of the Executive branch of the United States Government. As Secretary, Mr. Rumsfeld was charged by Congress with the responsibility under 5 U.S.C. § 9902(m) to collaborate jointly with the OPM Director and DoD employee representatives, including plaintiffs, to develop a labor relations system, the

failure of which is the subject of this lawsuit. Defendant Rumsfeld is being sued solely in his official capacity.

14. Defendant Dan G. Blair is the Acting Director of the United States Office of Personnel Management (“OPM”). The Director of OPM was charged by Congress with the responsibility under 5 U.S.C. § 9902(m) to collaborate jointly with the Secretary of DoD and DoD employee representatives, including plaintiffs, to develop a labor relations system, the failure of which is the subject of this lawsuit. Defendant Blair is being sued solely in his official capacity.

### **FACTS**

15. The National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 139 (2003), which includes 5 U.S.C. § 9902(m), became law on November 24, 2003. In § 9902(m)(1), Congress authorized “the Secretary, together with the Director,” to “establish and from time to time adjust a labor relations system for the Department of Defense.”

16. In § 9902(m)(3), Congress directed that the Secretary and the Director “ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of, employee representatives in the development and implementation of the labor management relations system. . . .” Congress specified that the “process for collaborating with employee representatives . . . shall begin no later than 60 calendar days after the date of this subsection.” 5 U.S.C. § 9902(m)(3)(D). In § 9902(m)(3)(A), Congress specified additional requirements of the collaboration process:

- (A) The Secretary and the Director shall, with respect to any proposed system or adjustment—
  - (i) afford employee representatives and management the opportunity to have meaningful discussions concerning the development of the new system;

- (ii) give such representatives at least 30 calendar days (unless extraordinary circumstances require earlier action) to review the proposal for the system and make recommendations with respect to it; and
- (iii) give any recommendations received from such representatives under clause (ii) full and fair consideration.

17. After enactment of the law, defendants over the course of more than a year developed their proposed labor relations system—to the point of publication in the Federal Register—using secret working groups. During this time, despite plaintiffs’ repeated requests, defendants denied plaintiffs and other employee representatives the opportunity to collaborate with, participate in, or have discussions with the secret groups, and refused to reveal to plaintiffs any of defendants’ instructions to the groups, or any of the groups’ preliminary draft proposals or other work products.

18. While the secret groups developed the labor relations system behind closed doors, defendants’ representatives gave plaintiffs “concept” papers and engaged plaintiffs in meaningless discussions, in which defendants presented no proposals. Defendants did not claim that these papers and discussions were the “meaningful discussions” required by § 9902(m)(3); rather, they expressly said that these papers were not proposals and that the discussions were “pre-statutory.”

19. Defendants announced that they would establish DoD’s labor relations system through formal, notice-and-comment rulemaking. Defendants then asserted that this formal rulemaking process prohibited DoD from revealing to or discussing with plaintiffs (or anyone else outside the agency) any preliminary or final draft of the proposed labor relations system regulation before publication of the proposed final regulation in the Federal Register. Based on this assertion, defendants rejected plaintiffs’ requests to collaborate with, participate in, or have discussions with defendants’ secret working groups; and denied plaintiffs’ requests to review

defendants' instructions to the groups, the groups' preliminary draft proposals, and the final proposed regulation, before its publication in the Federal Register.

### CLAIM

20. Defendants Secretary and Director have failed to ensure that the authority of § 9902(m) was exercised in collaboration with, and in a manner that ensured the participation of, employee representatives in the development of the labor management relations system for the DoD, in violation of 5 U.S.C. § 9902(m)(3). In particular, defendants have breached their § 9902(m)(3) duty not to develop a "labor relations system" without "afford[ing] employee representatives . . . the opportunity to have meaningful discussions concerning [its] development." Congress required that "collaboration with, and . . . participation of, employee representatives in the development . . . of the labor management relations system," including "meaningful discussions," start "no later than 60 calendar days after the date of enactment." In imposing this requirement, Congress required collaboration with, participation of, and meaningful discussions with employee representatives in the *early* development of the system. Defendants' use of secret working groups over the course of more than a year to develop to the point of publication in the Federal Register DoD's proposed labor relations system; defendants' denial of the opportunity for plaintiffs and other employee representatives to collaborate with, participate in, or have discussions with the secret groups; and defendants' refusal to reveal to plaintiffs and other employee representatives any of defendants' instructions to the groups, any of the groups' preliminary draft proposals or other work products, or the final proposed regulation, before publication in the Federal Register violated plaintiffs' rights under § 9902(m)(3).

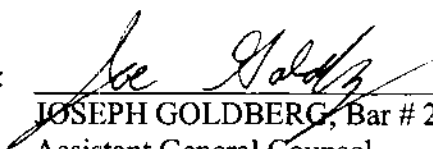
**RELIEF**

21. Plaintiffs ask the Court to
- a. enter judgment declaring that in violation of 5 U.S.C. § 9902(m)(3) defendants have developed a labor relations system without affording plaintiffs and other employee representatives the opportunity to have meaningful discussions concerning its development.
  - b. issue an injunction requiring defendants to
    - i. disclose to plaintiffs and other employee representatives defendants' instructions to the secret working groups, the secret groups' preliminary draft proposals, and other group work products that would have been shared with plaintiffs contemporaneously if defendants had not violated § 9902(m)(3);
    - ii. afford plaintiffs and other employee representatives the opportunity to engage in meaningful discussions concerning the development of the new labor relations system with the members of the secret working groups or other appropriate group that is tasked with developing the new system; and
    - iii. refrain from implementing any new labor relations system until they have complied with (i) and (ii) and all other § 9902(m)(3) requirements;
  - c. award plaintiffs their costs and reasonable attorneys' fees;
  - d. award plaintiffs such additional or alternative relief as the Court deems just.

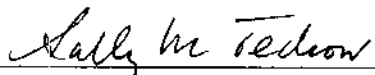
Respectfully submitted,

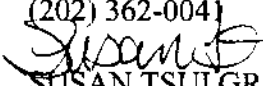
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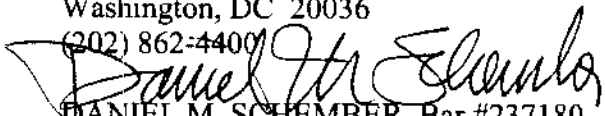
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