

April 29, 2016

MG Frank J. Grass

Chief

National Guard Bureau (NGB)

111 S. George Mason Dr.

Arlington, VA 22204

Re: CNGBI 9601.01 National Guard Discrimination Complaint Program

Dear Sir:

We're writing to inform you that our organization does not concur with NGB's release of CNGBI 9601.01 National Guard Discrimination Complaint Program, dated 27 September 2015. We're equally opposed to the pending release of the accompanying CNGBM. As we explained in our letter dated February 5, 2015 (attached), NGB has no statutory authority to assume control of or change the way complaints of discrimination by Federal employees are managed, even if those employees are dual-status technicians employed under 32 USC § 709.

The Equal Employment Opportunity Commission's (EEOC's) Office of Federal Operations (OFO) concurs with our assessment. Since 1984, the EEOC has held that dual-status technicians of the National Guard are covered by Section 717 of Title VII, when the alleged discriminatory action arises from the individual's capacity as a Federal employee. As a result, the EEOC, like the majority of federal courts, analyzes each National Guard dual-status technician complaint on a case-by-case basis to determine whether the EEOC has jurisdiction. That authority has been confirmed over and over, to include in the most recent cases which pertain to this subject matter (attached). As such, unless the EEOC determines a particular complaint is not covered by Section 717 of Title VII then NGB has no statutory authority to assume control of the complaint discrimination process.

Our organization will continue to inform employees of their rights under the Title VII of the Civil Rights Act of 1964, and 29 CFR § 1614, and advise that they oppose and report any attempt by either NGB or their employing state to obstruct justice. This letter is also being shared with each state where we represent technicians as a way to make them aware of our opposition to the new and pending regulations, and to reinforce EEOC jurisdiction. We also want to make them aware that if they choose to implement NGB's illegal regulation then they do so at their own financial peril since any/all penalties and judgements, including lawyer's fees, awarded by the EEOC will more than likely be borne by the state, not NGB. Aside from the denial of justice experienced by affected employees, the cost in dollars to states that have paid penalties for their failure to honor Title VII has been substantial, in some cases reaching the hundred-thousands.

Any questions or concerns regarding the subject matter of this letter should be directed to the undersigned via US Mail, via email at benbanchs@liuna-ngdc.org, or I may be reached via telephone at (985) 249-2315.

Respectfully,



Ben Bancins
Business Manager
LIUNA NGC Local 1776

cc (via email):

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