Rulings on Requests for Review of the Assistant Secretary of Labor for Labor-Management Relations Pursuant to Executive Order 11491, As Amended

Volume 2
July 1, 1975, through June 30, 1977

U.S. Department of Labor
Labor-Management Services Administration

Rulings on Requests for Review of the Assistant Secretary of Labor for Labor-Management Relations Pursuant to Executive Order 11491, As Amended

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This Volume includes Assistant Secretary Rulings on Requests for Review Nos. 534-908

U.S. Department of Labor
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PREFACE

This Volume of Rulings on Requests for Review of the Assistant Secretary of Labor for Labor-Management Relations Pursuant to Executive Order 11491, As Amended, covers the period from July 1, 1975, through June 30, 1977. It is comprised of letters containing the Rulings by the Assistant Secretary in consideration of Requests for Review of actions by Regional Administrators; and the actions of the Assistant Regional Administrators.

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726	Internal Revenue Service National Office, Brookhaven Service Center, Chamblee Service Center, Chicago District Office	6-17-76	22-6504	ULP	Remanded for Hearing	447
727	National Archives and Records Service General Services Administration Washington, D.C.	6-17-76	22-6290	GA	Request Denied	449
728	Veterans Administration Regional Office San Diego, California	6-22-76	72-5989	ULP	Request Denied	452
729	Department of the Navy Naval Air Station Los Alamitos, California	7-6-76	72-5910 et al	ULP	Request Denied	453
730	Department of the Army United States Army Missile Command Redstone Arsenal, Alabama	7-7-76	40-6828	GA	Request Denied	454
731	McChord Air Force Base McChord Air Force Base, Washington	7-7-76	71-3542	ULP	Request Denied	456

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732	U.S. Army - Corp of Engineers and Engineer Mathematical Computation Agency Berryville, Virginia	7-8-76	22-6278 22-6279	GA	Request Denied	457
733	General Services Administration Region 9 San Francisco, California	7-13-76	72-5705	CU	Request Denied	460
734	Veterans Administration Regional Office, Reno, Nevada	7-13-76	70-5054	ULP	Request Denied	462
735	Social Security Administration Baltimore, Maryland	7-13-76	22-6514	ULP	Request Denied	463
736	Northern Division, Naval Facilities Engineering Command	7-14-76	20-5451	ULP	Request Denied	465
737	Newark Air Force Station Aerospace Guidance and Metrology Center Newark, Ohio	7-14-76	53-8324	ULP	Request Denied	467
738	General Services Administration Region 5 Public Building Service Chicago, Illinois	7-14-76	50-13031	RO	Request Denied	469
739	Travis Air Force Base, California	7-16-76	70-5032	ULP	Request Denied	474
740	Aerospace Guidance and Metrology Center Newark Air Force Station Newark, Ohio	7-19-76	53-8531	ULP	Request Denied	475
741	Equal Employment Opportunity Commission Washington, D.C.	7-19-76	22-6503	ULP	Remanded for Hearing	477
742	National Weather Service Los Angeles, California	7-19-76	72-5655	ULP	Remanded for Hearing	479

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743	Massacusetts Army National Guard Boston, Massachusetts	7-19-76	31-8853	RO	Request Denied	480
744	Social Security Administration Macon, Georgia District Office	7-23-76	40-6648	RO	Request Denied	483
745	Defense General Supply Center	7-27-76	22-6569	ULP	Request Denied	487
746	National Labor Relations Board	8-4-76	22-6418	ULP	Request Denied	488
747	4500 Air Base Wing Langley Air Force Base	8-4-76	22-6644	ULP	Request Denied	490
748	Defense Contract Administration Services Region, Los Angeles Defense Supply Agency Los Angeles, California	8-5-76	72-5707	ULP	Request Denied	492
749	Navy Commissary Store Complex San Diego, California	8-5-76	72-5602	ULP	Request Denied	493
750	Rocky Mountain Arsenal Department of the Army Denver, Colorado	8-5-76	61-2587	GA	Request Denied	494
751	Department of Army Headquarters, U.S. Army Materiel Command	8-6-76	22-6445	ULP	Request Denied	497
752	United States Army Missile Command Redstone Arsenal, Alabama	8-6-76	40-6799	GA	Request Denied	500
753	U.S. Department of the Treasury Internal Revenue Service Memphis Service Center Memphis, Tennessee	8-9-76	41-4656	ULP	Request Denied	502
754	U.S. Dependent's Education Schools European Area (USDESEA) Darmstadt Career Center	8-10-76	22-6629	RO	Remanded to RA	503

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755	Internal Revenue Service Southwest Region Dallas, Texas	8-10-76	63-6195	ULP	Remanded for Hearing	504
756	Veterans Administration Hospital New Orleans, Louisiana	8-10-76	64-3089	ULP	Request Denied	506
757	U.S. Army Engineer District Vicksburg, Mississippi	8-10-76	41-4550	RO	Request Denied	507
758	Veterans Administration East Orange, New Jersey	8-11-76	32-4322	RO	Request Denied	510
759	National Treasury Employees Union Chapter 26 Internal Revenue Service	8-11-76	40-6673	ULP	Request Denied	512
760	Department of the Army United States Army Missile Command Redstone Arsenal, Alabama	8-13-76	40-6829	GA	Request Denied	514
761	AMC Department of the Army Corpus Christi Army Depot Corpus Christi, Texas	8-13-76	63-6000	ULP	Request Denied	516
762	Adjutant General State of Alabama	8-13-76	40-6825	ULP	Request Denied	518
763	Texas Air National Guard Dallas, Texas	8-13-76	63-6060	ULP	Request Denied	520
764	Veterans Administration Hospital Northport, New York	8-24-76	30-6573	ULP	Remanded for Hearing	522
765	Navy, Marine Corps Recruit Depot San Diego, California; Navy, Naval Air Systems Command, NAS North Island; and Navy, NAS North Island	8-24-76	72-6050 72-6051 72-6052	AC	Request Denied	527
766	U.S. Customs Service Washington, D.C.	8-26-76	22-6810	UC	Request Denied	530

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767	National Aeronautics and Space Administration Lyndon B. Johnson Space Center Houston, Texas	9-7-76	63-6138	ULP	Request Granted	532
768	Federal Aviation Administration National Aviation Facilities Experimental Center Atlantic City, New Jersey	9-8-76	32-3985 32-4008	RO	Request Denied	535
769	Federal Aviation Administration Eastern Region	9-9-76	30-5781	RO	Request Denied	538
770	Department of the Interior Geological Survey, Water Resources Division Austin, Texas	9-9-76	63-6126	ULP	Request Denied	542
771	Headquarters, United States Air Force and Headquarters, Tactical Air Command	9-9-76	22-6643	ULP	Request Denied	544
772	Federal Aviation Administration Olathe, Kansas	9-9-76	60-4545	ULP	Request Denied	546
773	Tennessee National Guard	9-10-76	41-4678	ULP	Request Denied	549
774	Defense Contract Administration Services Region - Los Angeles	9-10-76	72-5929	ULP	Request Denied	552
775	Federal Supply System General Services Administration Atlanta, Georgia	9-10-76	40-6697	ULP	Request Denied	553
776	Department of the Navy Naval Plant Representative Office	9-10-76	22-6655	ULP	Request Denied	555
777	National Treasury Employees Union Chapter 26 Internal Revenue Service	9-10-76	40-6673	ULP	Request Denied	557

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778	Department of Agriculture Office of Investigation Office of Audit	9-10-76	22-5979	ULP	Request Denied	559
779	Army and Air Force Exchange Service Capitol Exchange Region Headquarters	9-15-76	22-6657	ULP	Request Denied	561
780	Northern Division Naval Facilities Engineering Command	9-16-76	20-5544	ULP	Request Denied	563
781	Defense Supply Agency Defense Contract Administration Services	9-16-76	72-5930	ULP	Request Denied	565
782	Naval Air Rework Facility North Island San Diego, California	9-16-76	72-5972	ULP	Request Denied	566
783	New York Regional Office, HEW Bureau of District Office Operations Social Security Administration	9-16-76	30-6806	GA	Request Denied	567
784	Region IV, U.S. Customs Service	9-16-76	42-3257	ULP	Remanded for Hearing	569
785	General Services Administration Automated Data and Telecommunications Service, Region 4 Montgomery, Alabama	9-16-76	40-6996	ULP	Remanded for Hearing	571
786	National Association of Government Employees	9-16-76	22-6662	ULP	Request Denied	573
787	Charleston Naval Shipyard Charleston, South Carolina	9-30-76	40-6651	RO	Remanded to RA	574
788	Alabama National Guard Montgomery, Alabama	10-8-76	40-6970	ULP	Request Denied	579
789	National Weather Service	10-12-76	22-7313	ULP	Request Denied	581

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790	National Weather Service	10-12-76	22-7316	ULP	Request Denied	582
791	Defense Supply Agency Defense Contract Administrative Services Region Los Angeles, California	10-12-76	72-5933	ULP	Request Denied	584
792	AFGE, LU 2161 Samuel Kolesar	10-15-76	72-6092	ULP	Request Denied	585
793	Internal Revenue Service Jacksonville District	10-15-76	42-3334	ULP	Remanded for Hearing	586
794	Internal Revenue Service Birmingham District Office Birmingham, Alabama	10-15-76	40-6830	GA	Request Denied	588
795	National Association of Government Employees	10-21-76	22-6661	ULP	Request Denied	590
796	Department of HEW Social Security Administration Racine District Office	10-21-76	51-3337	ULP	Request Denied	592
797	Central Office, Bureau of Indian Affairs	10-20-76	22-6764	GA	Request Denied	594
798	Mare Island Naval Shipyard Vallejo, California	10-21-76	70-5192	ULP	Request Denied	599
799	General Services Administration Region 9 San Francisco, California	10-21-76	70-5123	GA	Request Denied	601
800	Veterans Administration Regional Office Newark, New Jersey	10-21-76	32-4340	Obj	Request Denied	605
801	Local 2206, American Federation of Government Employees, AFL-CIO Birmingham, Alabama	10-22-76	40-7025	ULP	Remanded for Hearing	607

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802	NASA, John F. Kennedy Space Center Kennedy Space Center, Florida	10-26-76	42-3378	GA	Request Denied	609
803	Vandenberg Air Force Base, California	11-5-76	72-5770	ULP	Remanded to RA	610
804	National Treasury Employees Union (NTEU) Washington, D.C.	11-9-76	50-13181	ULP	Request Denied	612
805	Internal Revenue Service Greensboro, North Carolina	11-29-76	40-6685	GA	Remanded for Hearing	613
806	Department of Navy Navy Public Works Center San Francisco Bay	11-10-76	70-4309	Obj	Request Denied	615
807	Social Security Administration Great Lakes Program Center Chicago, Illinois	11-15-76	50-13163	ULP	Request Denied	620
808	U.S. Department of the Air Force Travis Air Force Base, California	11-29-76	70-4750	Obj	Request Denied	623
809	U.S. Department of Housing and Urban Development Kansas City Regional Office	11-29-76	60-4434	ULP	Request Denied	625
810	Naval Air Rework Facility Naval Air Station Pensacola, Florida	11-29-76	42-3214	GA	Request Denied	627
811	National War College	12-7-76	22-6619	ULP	Request Denied	629
812	Naval Air Rework Facility Marine Corps Air Station Cherry Point, North Carolina	12-7-76	40-6777	GA	Request Denied	631
813	Internal Revenue Service St. Louis District Office	12-7-76	60-4633	GA	Request Denied	634

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814	National Archives and Records Center Atlanta, Georgia	12-9-76	40-7002	GA	Request Denied	636
815	Directorate of Distribution Ogden ALC Hill AFB, Utah	12-9-76	61-2963	ULP	Request Denied	637
816	4500 Air Base Wing Langley Air Force Base, Virginia	12-9-76	22-6699	ULP	Request Denied	639
817	U.S. Department of Interior Geological Survey Gulf of Mexico OCS Operation	12-13-76	64-3040	ULP	Request Denied	641
818	Long Beach Naval Shipyard Naval Air Station Los Alamitos, California	12-13-76	72-5848 et al	ULP	Request Denied	643
819	Army and Air Force Exchange Service Davis-Monthan Air Force Base, Arizona	12-13-76	72-5893	Obj	Request Denied	644
820	Department of Housing and Urban Development Columbia Area Office Columbia, South Carolina	12-14-75	40-6906	Obj	Remanded for Hearing	648
821	U.S. Marine Corps Supply Center Albany, Georgia	12-22-76	40-6885	ULP	Request Denied	652
822	General Services Administration Region 1, Boston, Massachusetts	12-22-76	31-10007	ULP	Request Denied	655
823	Social Security Administration Cape Girardeau, Missouri	12-22-76	62-4784	ULP	Request Denied	656
824	Veterans Administration Hospital Muskogee, Oklahoma	12-22-76	63-6897	GA	Request Denied	658
825	Veterans Administration Hospital Muskogee, Oklahoma	12-22-76	63-6896	GA	Request Denied	659
826	Social Security Administration Region V, Chicago, Illinois	12-23-76	50-13126	ULP	Request Denied	661

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827	Department of Defense Smokey Hill ANG Bomb Range Salina, Kansas	12-23-76	60-4537	ULP	Request Denied	662
828	Department of Interior U.S. Bureau of Reclamation Mid-Pacific Regional Office	12-23-76	70-5111	GA	Request Granted	664
829	Department of Justice Immigration and Naturalization Service, Southwest Regional Office	12-27-76	63-6302	ULP	Request Denied	668
830	Federal Employees Metal Trades Council Long Beach, California	1-3-77	72-6430	ULP	Request Denied	670
831	U.S. Customs Service Region IV Miami, Florida	1-3-77	42-3380	ULP	Remanded to RA	671
832	Social Security Administration Bureau of District Operations Utica, New York	1-12-77	35-4082	GA	Request Denied	673
833	General Services Administration Region III Washington, D.C.	1-13-76	22-6773	GA	Request Denied	675
834	Department of the Army Rock Island Arsenal Rock Island, Illinois	1-27-77	50-13188	GA	Request Denied	679
835	Internal Revenue Service Fargo District Office Fargo, North Dakota	1-27-77	60-4380	GA	Request Granted	682
836	Internal Revenue Service Indianapolis, Indiana	1-27-77	50-13135	ULP	Request Denied	686
837	U.S. Department of Housing and Urban Development Chicago Area Office	2-4-77	50-13180	ULP	Request Denied	688

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838	National Federation of Federal Employees, Local Union 273	2-7-77	63-7069	ULP	Request Denied	690
839	Department of Defense Dependents Schools European Region	2-7-77	22-6866	ULP	Request Denied	692
840	U.S. Army Training Center Fort Leonard Wood, Missouri	2-10-77	62-4875	GA	Request Denied	693
841	U.S. Department of Housing and Urban Development Columbus, Ohio	2-10-77	53-09347	ULP	Request Denied	695
842	U.S. Army Missile Command Redstone Arsenal, Alabama	2-10-77	40-7008	GA	Request Denied	696
843	Leo D. Smith, Complainant Local 1617, AFGE, Respondent	2-15-77	63-6452	S	Request Denied	698
844	American Federation of Government Employees, AFL-CIO	2-28-77	22-7444	S	Request Denied	780
845	American Federation of Government Employees, AFL-CIO New York, New York	2-28-77	22-0732	ULP	Request Denied	701
846	Internal Revenue Service Indianapolis, Indiana	2-28-77	50-13135	ULP	Request Denied	704
847	Department of the Army Rock Island Arsenal Rock Island, Illinois	2-28-77	50-13188	GA	Request Denied	706
848	National Treasury Employees Union Washington, D.C.	3-1-77	50-13183	ULP	Request Denied	708
849	McClellan AFB, California	3-2-77	70-5101	ULP	Request Denied	710
850	U.S. Army Training Center Fort Leonard Wood, Missouri	3-25-77	62-4846	GA	Request Denied	711

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851	Department of HEW Social Security Administration Quality Assurance Field Office San Francisco, California	3-25-77	70-5243 70-5395	CU/AC	Remanded to RA	713
852	U.S. Merchant Marine Academy	3-25-75	30-6787	ULP	Request Denied	716
853	Internal Revenue Service Milwaukee District, Wisconsin	3-25-75	51-3506	ULP	Remanded for Hearing	717
854	Department of the Air Force Scott AFB, Illinois	3-25-77	50-13087	GA	Request Granted	719
855	Department of the Army Reserve Components Personnel and Administration Center St. Louis, Missouri	3-25-77	62-5217	ULP	Request Denied	721
856	U.S. Army Training Center Fort Leonard Wood, Missouri	3-28-77	62-4831	GA	Request Denied	723
857	Northern Division, Naval Facilities Engineering Command Philadelphia, Pennsylvania	3-28-77	20-5593	ULP	Request Denied	725
858	Department of Treasury, Internal Revenue Service, and IRS Chicago District	3-29-77	50-13134	ULP	Remanded for Hearing	726
859	U.S. Customs Service Region II, New York	4-4-77	30-7232	RO	Remanded to RA	728
860	U.S. Immigration and Naturalization Service, Eastern Regional Office	4-4-77	31-9914	ULP	Request Denied	737
861	Department of HEW Social Security Administration Baltimore, Maryland	4-14-77	22-6905	GA	Request Denied	739
862	U.S. Army Aviation Center Fort Rucker, Alabama	4-11-77	40-7491	AC	Request Denied	741

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863	Internal Revenue Service Atlanta District Office	4-11-77	40-07435	ULP	Remanded for Hearing	743
864	U.S. Department of Army Fort Sam Houston, Texas	4-11-77	63-6962	ULP	Request Denied	745
865	U.S. Department of Army Fort Sam Houston, Texas	4-11-77	63-6963	ULP	Request Denied	746
866	U.S. Justice Department Bureau of Prisons Lewisburg Penitentiary, Pennsylvania	4-11-77	20-5623	ULP	Request Denied	747
867	Social Security Administration Bureau of Field Operations Glens Falls District Office Glens Falls, New York	4-11-77	35-4086	ULP	Request Denied	748
868	Community Services Administration Washington, D.C.	4-11-77	22-6839	GA	Request Granted	750
869	Department of the Navy Office of Civilian Manpower Management	4-14-77	22-07332	ULP	Remanded for Hearing	753
870	General Services Administration Region 9 San Francisco, California	4-14-77	70-5123	GA	Request Denied	755
871	U.S. Information Agency Washington, D.C.	4-18-77	22-7367	ULP	Request Denied	759
872	Federal Aviation Administration Northwest Region, Seattle, Washington	4-18-77	71-3757	ULP	Request Denied	761
873	Defense Supply Agency, DCASR Los Angeles, California	4-18-77	72-6087	ULP	Request Denied	762
874	Defense Supply Agency Defense Contract Administration Services Region St. Louis, Missouri	4-18-77	62-4812	ULP	Request Denied	763

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875	Department of Justice Immigration and Naturalization Service, Washington, D.C.	4-19-77	22-6812	GA	Request Denied	765
876	Defense/Army and Air Force Headquarters, Air Force Exchange Service Dallas, Texas	4-19-77	63-6356	GA	Request Denied	767
877	Department of Treasury IRS Chicago District	4-19-77	50-13154	ULP	Request Denied	771
878	Department of Treasury Internal Revenue Service Chicago, District, Illinois	4-20-77	50-13149	GA	Request Denied	773
879	Department of Treasury Internal Revenue Service Chicago District, Illinois	4-21-77	50-13148	GA	Request Denied	775
880	International Boundry and Water Commission Harlingen, Texas	4-21-77	63-6919	ULP	Request Denied	778
881	Headquarters, U.S. Army Materiel Development and Readiness Command Alexandria, Virginia	4-21-77	22-06872	ULP	Remanded to RA	779
882	Internal Revenue Service Des Moines District Office	4-22-77	62-4760	ULP	Request Denied	780
883	HEW, SSA, Northeastern Program Service Center	4-25-77	30-07317	ULP	Request Denied	782
884	Internal Revenue Service Southwest Region, Austin, Texas	4-25-77	63-6477	ULP	Request Denied	785
885	Smithsonian Institution National Zoological Park Washington, D.C.	4-29-77	22-7386	ULP	Request Denied	786
886	Department of the Air Force Otis Air Force Base, Massachusetts	4-29-77	31-09908	Obj	Request Granted	788

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887	Department of Transportation FAA, Aircraft Services Base Oklahoma City, Oklahoma	5-23-77	63-6448	GA	Request Denied	792
888	U.S. Department of Agriculture Prairie Village Commodity Office Prairie Village, Kansas	5-23-77	60-4629	ULP	Request Denied	794
889	Wisconsin Department of Military Affairs Wisconsin Army National Guard	6-2-77	51-3502	ULP	Request Denied	795
890	Environmental Protection Agency Denver, Colorado	6-3-77	61-3001	RO	Request Granted	797
891	Marshall Space Flight Center Marshall Space Flight Center, Alabama	6-3-77	40-7580	GA	Request Denied	798
892	Social Security Administration Cape Girardeau District Cape Girardeau, Missouri	6-3-77	62-5118	ULP	Request Denied	800
893	Department of the Air Force Bolling Air Force Base, Maryland	6-3-77	22-6770	GA	Request Denied	802
894	Veterans Administration Hines Marketing Center Hines, Illinois	6-6-77	50-13172	RO	Request Denied	805
895	Department of Treasury Internal Revenue Service St. Louis District, Missouri	6-6-77	62-4870	ULP	Remanded to RA	808
896	Immigration and Naturalization Service U.S. Border Patrol	6-6-77	22-06842	ULP	Request Denied	809
897	Marshall Space Flight Center Huntsville, Alabama	6-6-77	40-7474	GA	Remanded for Hearing	811

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898	U.S. Department of the Navy Norfolk Naval Shipyard Portsmouth, Virginia	6-6-77	22-7401	GA	Request Denied	813
899	Warner Robins Air Logistic Center Warner Robins Air Force Base, Georgia	6-6-77	40-7546	ULP	Request Denied	815
900	Department of the Air Force Headquarters 4756th Air Base Group (ADCOM) Tyndall Air Force Base, Florida	6-6-77	42-3566	ULP	Request Denied	818
901	U.S. Army Satellite Communications Agency Fort Monmouth, New Jersey	6-23-77	32-4792	ULP	Request Denied	820
902	Internal Revenue Service Oklahoma City District	6-23-77	63-7017	ULP	Request Denied	821
903	AFGE, Local 2723 and George Jacobs	6-24-77	70-5689	ULP	Request Denied	823
904	Internal Revenue Service San Francisco District	6-27-77	70-5397	GA	Request Denied	824
905	General Services Administration Region 5, Chicago, Illinois	6-27-77	52-06489	RO	Request Denied	827
906	NFFE, Local 273 Fort Sill, Oklahoma	6-27-77	63-7073	ULP	Request Denied	829
907	Department of the Treasury, IRS Chicago District, Illinois	6-27-77	50-13155	ULP	Request Denied	831
908	U.S. Customs Service Region II, New York	6-27-77	30-6859	GA	Request Denied	833

ALPHABETICAL TABLE OF RULINGS ON REQUESTS FOR REVIEW OF THE ASSISTANT SECRETARY */

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U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON

July, 1, 1975

534

Mr. Michael Sussman
Staff Attorney
National Federation of Federal
Employees
1737 H Street, N. W.
Washington, D. C. 20006

Re: Veterans Administration Hospital
New Orleans, Louisiana
Case No. 64-2464(CA)

Dear Mr. Sussman:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted. In this regard, it was noted that there was insufficient evidence to establish a reasonable basis for the allegations that the Respondent assisted or encouraged the American Federation of Government Employees (AFGE) in its organizing efforts or that the Respondent acquiesced in or approved the AFGE's alleged improper conduct.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR

LABOR-MANAGEMENT SERVICES ADMINISTRATION

911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

January 27, 1975

Mr. Michael Sussman, Staff Attorney
National Federation of Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006

Certified Mail #346047

Re: Unfair Labor Practice Complaint
Against the Veterans Administration
Hospital, New Orleans, Louisiana
Case No. 64-2464(CA)

Dear Mr. Sussman:

The above captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further processing is warranted inasmuch as a reasonable basis for the complaint has not been established.

You alleged that the Activity violated Section 19(a)(1), (2), (3), and (5) of the Order by permitting or allowing non-employee representatives of the American Federation of Government Employees (AFGE) to conduct organizational drives on the premises of the hospital among employees represented by Local 169, National Federation of Federal Employees. While it appears that such activity may have occurred, you have not shown that it was done with the permission, approval, or awareness of management. Rather, it appears that the hospital management did actively seek to prohibit and prevent the complained of conduct in those instances of which it was aware.

Under these circumstances, I find that you have failed to sustain your burden of proving, under Section 203.5(c) of the Regulations of the Assistant Secretary, a violation of Section 19(a)(3) of the Order. Further, there is no evidence that agency management interfered with, restrained or coerced an employee in the exercise of rights assured by the Order (Section 19(a)(1)); encouraged or discouraged membership in a labor organization by discrimination in regard to hiring, tenure, promotion or other conditions of employment (Section 19(a)(2)); or refused to accord appropriate recognition to the complainant (Section 19(a)(5)).

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations not later than the close of business February 10, 1975.

Sincerely,

Cullen P. Keough
Assistant Regional Director
for Labor-Management Services

cc: Mr. Val J. Kozak — Certified Mail #346048
Director of Field Operations
National Federation of Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006

Mr. Patrick Tapplette, President — Certified Mail #346049
Local Union 169, National Federation
of Federal Employees
5623 Dauphine Street
New Orleans, Louisiana 70117

Mr. Raymond J. Malloy — Certified Mail #346050
Assistant General Counsel
American Federation of Government Employees
1325 Massachusetts Avenue, N.W.
Washington, D.C. 20005

Mr. Stephen Shochet — Certified Mail #346051
Office of the General Counsel
Veterans Administration
600 Vermont Avenue
Washington, D.C. 20420

Mr. P. L. Adams, Personnel Officer — Certified Mail #346052
Veterans Administration Hospital
1601 Perdido Street
New Orleans, Louisiana 70146

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

July 1, 1975

535

Mr. David Cassidy
Vice President for the Office of
the Secretary
American Federation of Government
Employees, Local 3313
Box 476
Washington, D. C. 20044

Re: Department of Transportation
National Highway Traffic
Safety Administration
Case No. 22-5739(CA)

Dear Mr. Cassidy:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the Section 19(a)(1), (2) and (6) allegations of the complaint in the above-captioned case.

In agreement with the Assistant Regional Director, I conclude that further proceedings in this matter are unwarranted inasmuch as a reasonable basis for the complaint has not been established. In reaching the disposition herein, it was noted particularly that Section 1(b) of the Order provides, in part, that, except as provided in Section 24 of the Order, supervisors may not participate in the management of a labor organization or act as a representative of such an organization. Under the circumstances, I find that participation by a supervisor on a committee of the labor organization would be inconsistent with the aforementioned proscriptions contained in Section 1(b) and that, therefore, the Respondent's conduct in this case was not inconsistent with the purposes and policies of the Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

March 28, 1975

Mr. David Cassidy
Vice President
Office of the Secretary
American Federation of Government
Employees, Local 3313
Box 476
Washington, D.C. 20044
(Cert. Mail No. 701430)

Re: Department of Transportation
National Highway Traffic Safety
Administration
Case No. 22-5739(CA)

Dear Mr. Cassidy:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your charge alleges that the Activity violated Sections 19(a)(1), (2) and (6) of the Executive Order because it directed a supervisor, Walter Bailey, to resign his membership on the Legal Aid Committee of Local 3313 and this was done because Mr. Bailey had filed a grievance. You also charge that a representative of the Respondent had threatened this individual with other charges if a conflict of interest charge did not "stick." The charge you filed against the Agency, however, did not contain the last allegation.

The investigation revealed that Walter Bailey is a Supervisory Systems Analyst and a supervisor within the meaning of the Executive Order. Neither party has questioned the supervisory status of Mr. Bailey. Bailey is a member of the Union's Legal Aid Committee which was created by the Local to review present and potential open and closed panel legal services insurance plans, evaluate various plans and report and make recommendations to the Local. Respondent takes the position that Bailey's membership on the Committee is a conflict of interest with his duties and responsibilities as a supervisor, and his membership on the Committee may impose upon the Activity liability under Section 19(a)(1) and (3) of the Executive Order. As a result, it has asked Bailey to resign from the Committee and provide proof of such resignation. It also asserts that it does not ask Bailey to resign from the Union. The Union avers that Bailey was asked to leave the Committee because he had filed two grievances against the Agency. The investigation showed, nevertheless, that the grievances were filed subsequent to September 25, 1974, the date on which he was asked to resign from the Committee. It is clear from the record that Bailey is a supervisor within the meaning of the Executive Order. Section 19(a)(1) 1/ cites rights of employees. It would follow, therefore, that Respondent's request of Mr. Bailey that he not participate in the activities of the Union by virtue of membership on this particular Committee is not an interference with the rights of an employee unless it can be shown that such action, in some way, relates to activities of employees. No evidence has been presented or unearthed which would indicate that the Respondent was interested in Bailey's union activities in order to interfere with the rights of employees as set out in Section 1(a) of the Order. The evidence shows that the efforts were directed only to Bailey and not to his relations with other employees. There is, in addition, no evidence of independent 19(a)(1) activities by Respondent.

With respect to 19(a)(2), the record is clear that Bailey, while processing complaints about his rating, did not file the grievances until after he was requested to withdraw from the Legal Aid Committee. Respondent's action, therefore, could not have been retaliation for Bailey's filing grievances and, secondly, since Bailey is a supervisor, an actionable complaint could not be filed pursuant to 19(a)(2) which applies only to employees; supervisors are not covered by the Section.

There is no violation of 19(a)(6), inasmuch as the Assistant Secretary has found that the obligation to consult, confer and negotiate relates to the collective bargaining relationship between an incumbent labor organization and an agency and, even assuming the facts as averred by the Complainant, the alleged refusal to discuss by the Activity was related to Bailey's membership on the Legal Aid Committee and Respondent's position that it would conflict with his supervisory duties. I find, therefore, no possible violation of Section 19(a)(6) 2/.

In these circumstances, therefore, I find no reasonable basis for the issuance of a notice of hearing based upon allegations of violations of 19(a)(1), (2) and (6).

I am, therefore, dismissing the complaint in this matter.

1/ Sec. 19. Unfair labor practices. (a) Agency management shall not--(1) interfere with, or coerce an employee in the exercise of the rights assured by this Order.

2/ U. S. Department of Defense, A/SLMR No. 211.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business April 10, 1975.

Sincerely,

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

cc: Mr. James B. Gregory, Administrator
U. S. Department of Transportation
National Highway Traffic Safety Administration
7th and "D" Streets, SW
Washington, D.C. 20590
(Cert. Mail No. 701431)

bcc: Dow E. Walker, AD/WAO
ATTN: Earl T. Hart, AAD

S. Jesse Reuben, OFLMR

John Gribbin, Labor Relations Officer/CSC

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

July 1, 1975

536

Mr. Thomas Skidmore
American Federation of Government
Employees, Local 48, AFL-CIO,
247 S. Callow
Bremerton, Washington 98310

Re: Department of the Navy,
Naval Regional Medical Center,
Bremerton, Washington
Case No. 71-3139(CU)

Dear Mr. Skidmore:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Petition for Clarification of Unit in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the evidence did not establish that the employees of the Shipyard Dispensary have accreted to the existing unit represented by American Federation of Government Employees, Local 48, AFL-CIO. Consequently, further proceedings in this matter were deemed unwarranted.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the petition, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

DEPARTMENT OF THE NAVY NAVAL REGIONAL MEDICAL CENTER BREMERTON, WASHINGTON -ACTIVITY -AND- AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 48, AFL-CIO BREMERTON, WASHINGTON -LABOR ORGANIZATION/ PETITIONER	CASE NO. 71-3139

REPORT AND FINDINGS

ON

PETITION FOR CLARIFICATION OF UNIT

Upon a petition for clarification of unit having been filed in accordance with Section 202.2(c) of the Regulations of the Assistant Secretary, the undersigned, after posting of notice of the petition, has completed the investigation and finds as follows:

The American Federation of Government Employees (AFGE), Local 48, AFL-CIO, is the current exclusive bargaining representative of the following unit of employees:

> All graded and all ungraded employees of the Naval Hospital, Bremerton, excluding managers, all supervisors, and all professional employees.

The AFGE seeks clarification of the existing exclusively recognized unit in order to bring it into conformance with the new organizational structure created by the transfer of function of the Shipyard Dispensary, Puget Sound Naval Shipyard, Bremerton, Washington to the Naval Regional Medical Center (NRMC), Bremerton. Specifically, the AFGE seeks to add all GS nonsupervisory, nonprofessional employees employed in the Shipyard Dispensary to the above-described unit.

The employees working at the Shipyard Dispensary are part of an Activity-wide unit of employees of the Puget Sound Naval Shipyard for which the Bremerton Metal Trades Council was granted exclusive recognition on October 12, 1962.

On July 1, 1972, the Naval Regional Medical Center, Bremerton was established. As part of this action, the employees of the Shipyard Dispensary were transferred from the command of the Puget Sound Naval Shipyard to the NRMC on January 1, 1973. Also, the Naval Hospital, Bremerton was disestablished and consolidated into the NRMC on February 1, 1974 (this facility is now referred to as the "core hospital").

While the Shipyard Dispensary has been transferred to a new command, its primary function, the provision of industrial health care for the civilian employees of the Puget Sound Naval Shipyard, has remained unchanged. Furthermore, the Dispensary nurses continue to utilize specialized job skills which the hospital nurses do not share. The transfer did not lead to any personnel reassignments or interchanges within the NRMC. The supervision of the employees of the Shipyard Dispensary remained unchanged except for the replacement of the position of Medical Director by those of Director, Occupational Health and of Officer-in-Charge. The location of the Shipyard Dispensary was not changed. The terms and conditions of the employees' employment have not been substantially affected. Based on the foregoing, I find the employees in the Shipyard Dispensary have remained a viable and identifiable group within the NRMC and have not accreted to the unit of employees at the core hospital represented by the AFGE.

Having found that the employees at the Shipyard Dispensary have not been added or accreted to the unit represented by the AFGE, the parties are advised hereby that, absent the timely filing of a request for review of this Report and Findings, the undersigned intends to issue a letter dismissing the petition.

Pursuant to Section 202.4(i) of the Regulations of the Assistant Secretary, a party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request must be served on the undersigned Assistant Regional Director as well as the other party. A statement of service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on April 10, 1975.

Labor-Management Services Administration

Gordon M. Byrholdt

Gordon M. Byrholdt
Assistant Regional Director
San Francisco Region
U. S. Department of Labor
Room 9061, Federal Building
450 Golden Gate Avenue
San Francisco, California 94102

Dated: March 28, 1975

July 9, 1975

537

Mr. Victor H. English
Chief, Branch of Personnel
U. S. Department of the Interior,
Bonneville Power Administration
P. O. Box 3621
Portland, Oregon 97208

Re: Bonneville Power Administration
Portland, Oregon
Case No. 71-3239(AP)

Dear Mr. English:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability.

In your request for review you contend, contrary to the findings of the Assistant Regional Director, that the April 23, 1974 grievance did not involve areas of consideration but, rather, involved the question of whether or not the specific language of Article 8, Section A of Supplement 1 of the parties' negotiated agreement interferes with management's right to promote under Section 12(b)(2) of Executive Order 11491, as amended, and violates Civil Service Commission and agency regulations.

Under the particulsr circumstances of this case, I find, in agreement with the Assistant Regional Director, that the unresolved issues herein involve the interpretation and application of the negotiated agreement and are arbitrable pursuant to the terms of the agreement. In this regard, it was noted that while the decision to promote is a reserved management right under Section 12(b) of the Executive Order, there is no basis in the Order to conclude "that such reservation of decision making and action authority is intended to bar negotiations of procedures, to the extent consonant with law and regulations, which management will observe in reaching the decision or taking the action involved, provided that such procedures do not negate the authority reserved." (emphasis added) Veterans Administration Research Hospital, Chicago, Illinois, FLRC No. 71A-31, and Social Security Administration, Headquarters Bureaus and Offices, Baltimore, Maryland, FLRC No. 71A-22. While the above cited decisions of the Federal Labor Relations Council (Council) did not involve questions related to promotions, in my view, the rationale, as set forth above, is applicable in such situations.

In the instant case, the disputed provision of the parties' negotiated agreement merely sets forth the procedures for management to observe in selecting employees for promotion. Moreover, as noted by the Assistant Regional Director, the Article in dispute does not add a new criterion for promotion nor does it run counter to Federal Personnel Manual or agency regulations with respect to limiting the area of consideration below the minimum area of consideration. Under the circumstances, I find that the grievance herein is arbitrable and that the matter is not barred from consideration by an arbitrator by virtue of Section 12(b) of the Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, Labor-Management Services Administration, United States Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 9061, Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

BONNEVILLE POWER ADMINISTRATION PORTLAND, OREGON -ACTIVITY -AND- AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 928, AFL-CIO -LABOR ORGANIZATION/ APPLICANT	)	CASE NO. 71-3239

REPORT AND FINDINGS

ON

AN APPLICATION FOR DECISION ON ARBITRABILITY

On December 18, 1974, the American Federation of Government Employees, Local 928, AFL-CIO, hereinafter referred to as Applicant, filed an Application for Decision on Arbitrability in accordance with Section 206 of the Regulations of the Assistant Secretary. The undersigned has caused an investigation of the facts to be made and finds as follows:

The Applicant and the Bonneville Power Administrative, hereinafter referred to as BPA, are parties to a Basic Agreement and a Supplementary Agreement No. 1, both of which are effective for a two-year period from January 15, 1974. The Applicant seeks a decision as to whether its grievance dated April 23, 1974, is subject to arbitration under the existing Agreement.

The facts, which are not in dispute, indicate the Applicant's grievance was filed under Article 12 of the Basic Agreement, alleging that the BPA had not abided by the requirements of Article 8, Section A, Supplementary Agreement No. 1, when it promoted a non-BPA employee to the position of Electrical Engineering Technician GS-11. The Applicant proposed that the BPA rescind the promotion given to the non-BPA employee and promote one of the two BPA employees on whose behalf the grievance was filed and who were found to be highly qualified for the vacant position. The grievance was processed through the negotiated grievance procedure with BPA initially contending that the subject matter of the grievance was not a negotiable item. Thereafter, at succeeding steps, BPA modified or augmented its position by asserting that Article 8, Section A of the Supplementary Agreement No. 1, the provision of the Agreement dealing with promotions, conflicted with Federal Personnel Manual Regulations. Applicant then invoked arbitration. BPA rejected the grievance as not arbitrable on the ground the agreement language contained in Article 8, Section A of Supplementary Agreement No. 1 was contrary to regulations found in the Federal Personnel Manual. Thereupon, Applicant filed this application.

Article 8, Supplementary Agreement No. 1, captioned Promotions, consists of three sections. The pertinent section is cited below:

> Section A. Promotions will be made in accordance with the BPA Manual and the Union will be consulted on changes in the promotion program. Present employees will receive preference in selection for vacancies when qualifications of candidates are substantially equal. The nonselected candidates may request their Servicing Personnel Officer to obtain reasons why they were not selected or what they should do to improve themselves.

Article 12, Basic Agreement, captioned Grievances, consists of six sections. The pertinent sections are cited below:

> Section C. It is understood that the adjudication of grievances extends only to the interpretation and application of this agreement and cannot be used to change the agreement. Neither can it be used for matters excluded from coverage under FPM Section 771-3-14c.
>
> Section F(5). If this decision (by the Administrator) does not satisfy the Union, it may, within the next 10 calendar days request the Administrator, in writing, to jointly appoint an arbitrator to investigate and hold a hearing on the grievance and write a decision within the next 30 days.

Article 1, Basic Agreement, captioned Governing Regulations, consists of five sections. The pertinent section is cited below:

> Section B. In the administration of all matters covered by this agreement and subsequent supplementary agreements, management officials and employees are governed by existing or future laws and regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published Bureau and Department of the Interior's policies and regulations in existence at the time the agreement was approved; and by subsequently published Bureau and Department of the Interior's policies and regulations required by law or by the regulations of appropriate authorities.

The Applicant, in contending that the grievance should be subject to the arbitration provisions of the negotiated agreement, asserts BPA accepted the grievance and ruled on its merits. In making this assertion, Applicant appears to rely on a May 1, 1974, grievance meeting and on a May 6, 1974, memorandum to Applicant in which, in conjunction with the articulated

position of BPA concerning the nongrievability of the issues, BPA states in conclusionary terms that the selected employee had qualifications superior to the other applicants. In my view, BPA has maintained a consistent position as to the arbitrability of the grievance and its reference to the basis for selection of the successful applicant was no more than an attempt to ameliorate its relations with the unsuccessful applicants and with Applicant.

Applicant also avers that Article 8, Section A, Supplementary Agreement No. 1 had been reviewed and approved by higher authority and, therefore, is operative. BPA has invoked Section C of the Basic Agreement which provides, in substance, that a party may request renegotiation of a provision in an agreement which is deemed to be in conflict with any law, regulation or policy binding on the activity which is subsequently enacted. Applicant disagrees with the invocation of Section C, asserting that this provision of the agreement contemplates only laws, regulations or policies enacted subsequent to the agreement being finalized by the parties. In my view, resolution of the question as to the applicability of Section C will result from a determination of the issue raised in the application since it is intertwined but subordinate to that issue.

The Activity contends, contrary to Applicant, that Article 8, Section A, Supplementary Agreement No. 1, contravenes FPM and BPA regulations since this provision of the agreement requires a selecting officer to select a BPA employee rather than an equally well-qualified Department employee. In support of this contention, the Activity relies on the below cited excerpt from FPM and BPA regulations:

Federal Personnel Manual

1. Provisions required or prohibited (in negotiation) by the Commission's instructions. For example, selection must be from among the best qualified candidates, supervisory performance appraisals must be obtained; and length of service or experience may not be an evaluation or ranking factor unless there is a clear and positive relationship with quality of performance or there is a tie among candidates after using all evaluation factors measuring quality.

2. Qualification standards and evaluation methods established or approved by the Commission. For example, competitive experience and training standards approved by the Commission; a written test required by the Commission; and limitations specified in Commission instructions on setting requirements in addition to competitive standards.

3. Reserved management rights identified in Executive Order 10988 (replaced by Executive Order 11491). For example, how agency work is organized; what duties are assigned to individual positions; and which candidate among the best-qualified is selected for promotion. (Emphasis supplied.) FPM Chapter 335.28, Subchapter 5, Part 5-1d.

Department of Interior Regulations

410.4 Policy.

To the maximum extent possible, BPA's Merit Promotion Program policy provides for filling vacancies above the entrance level by promotion of highly qualified BPA or Department employees. This policy does not restrict the right of appointing officers to fill vacancies by reassignment or other means when it is clearly in BPA's best interest to do so.

The Merit Promotion Program is an integral part of BPA management development plans and other programs in the areas of staffing, training, and manpower utilization. (Emphasis supplied.) 370 DM, Subchapter 2, Part 2.1.

Additionally, the Activity agrees that Section 12(b) of the Executive Order, as amended, sets forth certain fundamental management rights which may not be bargained away.1/

In my opinion, disposition of the application turns on a decision as to whether Article 8, Section A, Supplementary Agreement No. 1, is consistent with the mandates of Section 11 and Section 12 of the Order. If the answer is in the affirmative, it would follow that the grievance arising out of that provision of the agreement would be resolved through the negotiated grievance-arbitration procedures.

The Council, in rejecting an argument raised in a negotiability case,2/ wherein the activity contended that a proposal concerning areas of consideration in making promotions was inconsistent with the requirements of FPM and published agency policies, noted that the proposal did not establish a qualification for promotion nor did the proposal negate FPM requirements, e.g., the need to extend the minimum area of consideration if it does not produce at least three highly qualified candidates; to allow employees outside the minimum area to file voluntary applications; and to consider, along with employees in the minimum area, such voluntary applicants who meet the position qualifications.

Similarly, in the instant case, the provisions of the Article in dispute do not add a new criterion for promotion nor run counter to FPM and agency policies with respect to the area of consideration being reduced below the minimum area of consideration. Moreover, persons employed

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1/ Section 12(b) of Executive Order 11491, as amended, provides in part:

> Management officials of the agency retain the right in accordance with applicable laws and regulations...(2) to hire, promote, transfer, assign and retain employees in positions within the agency....

2/ Social Security Administration, Headquarters Bureaus and Offices, Baltimore, Maryland, FLRC No. 71A-22.

throughout the Department can apply and be considered for positions within BPA on the basis of their qualifications with no weight given to whether their current employment is in a component other than BPA. Accordingly, since I conclude that Article 8, Section A, Supplementary Agreement No. 1 does not contravene the Order, I find that the grievance as it pertains to this provision of the agreement is arbitrable under the agreement.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, a party may obtain a review of these findings by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request must be served on this office and the other party. A statement of service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on March 4, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Gordon M. Byrholdt

GORDON M. BYRHOLDT
Assistant Regional Director
San Francisco Region
U. S. Department of Labor
Room 9061, Federal Building
450 Golden Gate Avenue
San Francisco, California 94102

Dated: February 19, 1975

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

July 21, 1975

538

Mr. John P. Helm
Staff Attorney
National Federation of
Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006

Re: Northern Division,
Naval Facilities
Engineering Command,
U.S. Naval Base
Case No. 20-4749(CA)

Dear Mr. Helm:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director and based on his reasoning, that a reasonable basis for the instant complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

March 6, 1975

John P. Helm
Staff Attorney
National Federation of Federal Employees
1737 "H" Street, NW
Washington, D.C. 20006
(Cert. Mail No. 701331)

Re: U. S. Naval Base
Northern Division, Naval
Facilities, Engineering
Command, Philadelphia
Case No. 20-4749(CA)

Dear Mr. Helm:

The above-captioned case alleging violations of Section 19(a)(2), (5) and (6) of Executive Order 11491, as amended, has been investigated and carefully considered. It does not appear that further proceedings are warranted.

Basically, your complaint filed November 14, 1974 alleges that:

1. Management failed to accord appropriate recognition to NFFE, Local 1430, when it unilaterally decided to disestablish the Cadastral and Facilities Inventory Branch without prior consultation regarding the impact on the working conditions of unit employees.

2. Management transferred the supervisor of the disestablished branch to a position filled by an Officer of NFFE, Local 1430; thereby, displacing Mr. Marshall. In so doing, management acted to discourage membership in the Local and to discriminate against Mr. Marshall because of his union activities.

Section 203.5(c) of the Rules and Regulations of the Assistant Secretary provides that the Complainant must bear the burden of proof at all stages of the proceedings. This includes the investigative stage where information is provided which will serve as a basis for the Assistant Regional Director to make a determination concerning whether there is a reasonable basis for the complaint.

Our investigation into your complaint discloses that the Respondent was ordered by higher authority on September 7, 1973 to disestablish the Cadastral and Facilities Inventory Branch effective immediately, but delayed implementation for about nine months while attempts were being made to have the order vacated; and, prior to and during this period, the local was advised of the pending move. Our file does not reflect, nor do you allege, that at any time you requested or were denied the opportunity to consult and confer with management with respect to the impact on the working conditions of the affected employees as provided in your negotiated agreement.

The actual effects of the disestablishment of the Cadastral and Facilities Inventory Branch took place on or about July 1, 1974 and was culminated with the Parente/Marshall transfer of September 8, 1974. The investigation discloses that numerous and diligent conferences took place about midway through the period of implementation.

It would appear, then, that you had adequate notice of the pending disestablishment; that you did not request nor were you denied the opportunity to consult regarding the impact on working conditions; and even if delayed, the conferences, once begun, were diligently conducted before the disestablishment of the Cadastral and Facilities Inventory Branch was completed. Therefore, I am dismissing your allegation of violations of Section 19(a)(6).

Basically, Section 19(a)(5) relates to the granting of appropriate recognition. Our investigation in this case discloses that Respondent does, in fact, recognize NFFE, Local 1430, as the Certified Exclusive Representative for the affected unit employees; and, that a collective bargaining agreement has been successfully negotiated between the parties. Investigation does not show, nor do you allege, that the Respondent has withdrawn recognition. For these reasons, I am dismissing your allegation of violations of Section 19(a)(5).

With regard to the disestablishment of the Cadastral and Facilities Inventory Branch and the Parente/Marshall transfer, you have not submitted any evidence, conclusive or otherwise, which would demonstrate that Respondent acted to discourage membership in the local or to discriminate against Mr. Marshall because of his union activity. You fail to show how Respondent acted in an allegedly invidious manner with respect to the transfer itself, nor do you show what union duties and functions Mr. Marshall performed which might have been the basis for such alleged discrimination. Since you have presented no evidence to support your contention, I am dismissing your 19(a)(2) allegation.

Accordingly, for the reasons stated above and on the grounds that you have failed to establish a reasonable basis for the complaint which would warrant a hearing on either the 19(a)(2), (5) or (6) allegations, I am dismissing your complaint in its entirety. 1/

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C., 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business March 19, 1975.

Sincerely,

Joseph A. Senge
Acting Assistant Regional Director
for Labor-Management Services

cc: Captain Charles C. Heid
Department of the Navy
Northern Division, Naval Facilities,
Engineering Command
U. S. Naval Base
Philadelphia, Pa. 19112
(Cert. Mail No. 701382)

Mr. Joseph J. Dallas
Labor Relations Advisor
Regional Office of Civilian Manpower Management
Building 4, Naval Base
Philadelphia, Pa. 19112
(Cert. Mail No. 701383)

1/ The Motion To Dismiss By Respondent is granted for the reasons indicated above.

bcc: Robert N. Merchant, AD/PHIAO
S. Jesse Reuben, Deputy Dir./OFLMR

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

July 21, 1975

539

Mr. Joseph Russell, President
American Federation of Government
Employees
District 14, AFL-CIO
8020 New Hampshire Avenue
Hyattsville, Maryland 20783

Re: General Services Administration
Region 3
Case No. 22-5830(CA)

Dear Mr. Russell:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the Section 19(a)(1) and (6) allegations of the complaint in the above-captioned case.

Under all of the circumstances, I have concluded that a reasonable basis for the Section 19(a)(1) and (6) allegations has been established. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is granted and this case is hereby remanded to the Assistant Regional Director for reinstatement of the complaint and, absent settlement, for issuance of a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

April 10, 1975

Mr. Donald M. MacIntyre
National Representative
American Federation of Government
Employees, AFL-CIO
AFGE District 14
8020 New Hampshire Avenue
Langley Park
Hyattsville, Md. 20783
(Cert. Mail No. 701440)

Re: General Services Administration
Region 3
Case No. 22-5830(CA)

Dear Mr. MacIntyre:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your complaint asserts violations of Section 19(a)(1) and (6) by Respondent, General Services Administration, Region 3, on the basis that you have been denied access to employee records relevant to a resolution of a grievance which had been previously filed.

The investigation revealed that a grievance had been filed by a roofer employee requesting hazardous duty pay. The Respondent conducted an investigation of working conditions of roofers and determined on December 17, 1974 that employees assigned to the roofing shop were entitled to hazardous duty pay. On December 19, 1974, differential pay was authorized to those employees exposed to the specific working conditions for which differential pay had been established and that such pay could be retroactive to the first pay period beginning on or after November 1, 1970 and October 22, 1972 to the present. The notice also indicated that:

> "...The manager of the Central Support Field Office must certify any requests for retroactive pay, and he should, therefore, base his certifications on existing official records. If no written record have been kept of exposures to authorized conditions, the effective date for payment of these differentials would begin the first pay period following the date of this letter of transmittal."

On January 8, 1975, you alleged the unfair labor practice charge. On January 6, 1975, you communicated with the foreman of the roofing shop by telephone and was told he had copies of records as far back to January 1973 as well as daily notes which he kept on a note pad. You asserted the foreman offered his records for union review but was informed that the records first had to be sorted out. You requested the records and asked to be present when they were sorted. You, thereafter, approached Mr. Liburd, Labor Relations Officer, and was told you could not visit the work place to inspect the records or observe the posting until they had been sorted and determined to be pertinent or relevant. There is no evidence that the Respondent categorically refused to show you records at any time. The evidence fairly shows that you were told by Mr. Liburd that, when the Activity had a chance to sort out its records and determine those that were pertinent and relevant, you would be contacted. At the time, however, you were denied permission to visit the facility or to observe the sorting. You were granted permission after some persistence, however, to review reports for a one month period. You admit that the Activity is prepared to show you work reports in their custody but assert they had not done so. You say that you are not prepared to look at these reports asserting, "We are awaiting their settlement offer which they are preparing and when it is presented to us, we will at that time, ask to review records if such review is necessary in order to evaluate their offer of settlement in the grievance matter."

The grievance which was filed was investigated and sustained by the Activity on December 17, 1974. Time was needed to comply with the remedies directed in the grievance resolution. To issue a notice of hearing, I must find there is reasonable cause to believe that a violation is occurring. The evidence indicates: (1) That you were refused permission to be with the Shop Foreman when he looked over his records to ascertain which were applicable to the grievance, but you were given some preliminary records covering a one month period; (2) Respondent is now prepared to make records available to you and; (3) There is no evidence of an anti-union attitude. The evidence cited above fails to show "reasonable cause." Respondent's position that it wanted time to collate records, determine pertinence or relevance is a reasonable request. The initial denial to you of permission to be with the Roofing Foreman when he started looking at his records is not unreasonable.

For all these reasons, I see no reasonable basis for the issuance of a notice of hearing.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business April 23, 1975.

Sincerely,

Joseph A. Senge
Acting Assistant Regional Director
for Labor-Management Services

cc: Mr. John F. Galuardi
Acting Regional Administrator
General Services Administration
Region 3
7th and D Streets, SW
Washington, D.C. 20407 (Cert. Mail No. 701441)

Mr. Joseph F. Russell, President
American Federation of Government Employees,
AFL-CIO, Local 2151
8020 New Hampshire Avenue
AFGE District 14
Langley Park
Hyattsville, Md. 20783

bcc: Dow E. Walker, AD/WAO
ATTN: Earl T. Hart, AAD

S. Jesse Reuben, Deputy Director/OFLMR

John Gribbin, CSC, Lbr. Rel. Off.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

July 21, 1975

540

William K. Holt, President
Bremerton Metal Trades Council, AFL-CIO
P.O. Box 448
Bremerton, Washington 98310

Re: Puget Sound Naval Shipyard
Bremerton, Washington
Case No. 71-3138(CA)

Dear Mr. Holt:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the subject complaint filed by the Bremerton Metal Trades Council, AFL-CIO, in the above-named case.

In agreement with the Assistant Regional Director, I find that further proceedings in the matter are not warranted. Thus, it was concluded that Section 19(d) of the Order precludes the consideration of the allegations raised in the complaint as the evidence establishes that such allegations have been raised previously by representatives of the Bremerton Metal Trades Council under a negotiated grievance procedure.

Accordingly, and noting that the matters raised for the first time in the request for review cannot be considered by the Assistant Secretary, (See Report on a Ruling of the Assistant Secretary, No. 46, copy enclosed), your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachments

January 20, 1972

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
REPORT ON A RULING OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Report Number 46

Problem

A Complainant in an unfair labor practice case failed to furnish requested information required by the Regulations (e.g., time and place of occurrence of alleged acts) prior to the issuance of the Regional Administrator's dismissal of its complaint. The request for review introduced the necessary information for the first time. The question was raised whether or not such information should be considered by the Assistant Secretary.

Decision

Consistent with Report on Ruling No. 22, and Charleston, South Carolina Veterans Administration Hospital, A/SLMR No. 87, evidence or information required by the Regulations that is furnished for the first time in a request for review, where a Complainant has had adequate opportunity to furnish it during the investigation period (provided for in Section 203.5 of the Regulations) and prior to the issuance of the Regional Administrator's decision, shall not be considered by the Assistant Secretary.

January 10, 1975

Mr. William K. Holt, President
Bremerton Metal Trades Council
P. O. Box 448
Bremerton, Washington 98310

Re: Puget Sound Naval Shipyard - Bremerton MTC Case No. 71-3138

Dear Mr. Holt:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as Section 19(d) of the Order precludes consideration of the matter by the Assistant Secretary of Labor because the issues raised in the instant complaint have been previously raised under the contractual grievance procedure. Section 19(d) of the Order provides, in part, that:

> "...Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures."

On August 28, 1974, a group of Bremerton Metal Trades Council shop stewards and the Secretary-Treasurer filed a grievance concerning the same issue as that set forth in the complaint; namely, the unilateral rescinding of Mr. Lee A. Holley's permission to enter the Shipyard and its resultant effect upon their training. Although signed by the stewards, this grievance apparently was filed on behalf of the Bremerton Metal Trades Council as evidenced by the fact that it was involved at the third step of the grievance procedure, rather than at the informal step as would be the case if it had been filed by an individual employee. By raising this matter under the grievance procedure, the Bremerton Metal Trades Council is precluded from later raising this matter through the complaint procedure of Section 19 of the Order.

I am, therefore, dismissing the complaint in this matter.

I have considered the Respondent's Motion To Dismiss. In view of my action in this case, I find it unnecessary to rule on the Motion.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business on January 23, 1975.

Sincerely,

Gordon M. Syrholdt
Assistant Regional Director/LMSA

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

July 21, 1975

541

Mr. Michael E. Goldman
Assistant Counsel
National Treasury Employees Union
1730 K Street, N.W.
Washington, D. C. 20006

Re: Internal Revenue Service
Chicago District
Chicago, Illinois
Case No. 50-11139(CA)

Dear Mr. Goldman:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the subject complaint alleging violation of Section 19(a)(1) and (6) of the Executive Order.

In agreement with the Assistant Regional Director and based on his reasoning, I find that further proceedings in this matter are unwarranted inasmuch as a reasonable basis for the complaint was not established. In this regard, it was noted that while the Activity refused to recognize Scott Schaffer as the Complainant's chief steward at a labor-management relations meeting on August 13, 1974, on the grounds that Schaffer, a non-employee, had no right under a disputed provision of the parties' negotiated agreement to serve as a steward, subsequent to the meeting the Activity withdrew its objections to Schaffer serving as chief steward and, therefore, he functioned as chief steward without any restriction.

Accordingly, under these particular circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

INTERNAL REVENUE SERVICE,
CHICAGO DISTRICT,
CHICAGO, ILLINOIS

Respondent,

Case No. 50-11139(CA)

and

NATIONAL TREASURY EMPLOYEES UNION,
AND CHAPTER 10, NATIONAL TREASURY
EMPLOYEES UNION, 1/

Complainant

The Complaint in the above captioned case was filed in the office of the Chicago Area Director on October 7, 1974. It alleges a violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in this case.

It is alleged that the Respondent violated Sections 19(a)(1) and (6) of the Order by informing NTEU on August 13, 1974, that it would no longer recognize Scott Schaeffer as Chief Steward of Chapter 10, NTEU. The alleged refusal was based on the Respondent's position that it was not obligated to recognize a non-IRS employee as a Chief Steward. 2/

The report of investigation as submitted by the parties reveals their agreement as to the occurrance of the following: At an August 13, 1974, labor-management meeting the status of Scott Schaeffer as Chief Steward was discussed. During the course of that meeting Mr. James Morely, Chief, Labor Relations Staff, IRS, Chicago District, stated that based upon the language of Article 6, Section 2(B)(1) of the Multi-District Agreement between the IRS and NTEU, Schaeffer could not continue to serve as Chief Steward. Representatives of NTEU responded that such a position is contrary to the findings of the Assistant Secretary in Internal Revenue Service, Omaha District Office, A/SLMR No. 417. 3/

1/ Hereinafter referred to as NTEU.

2/ Mr. Schaeffer left his position as a Stabilization Service Representative with the Internal Revenue Service on May 10, 1974.

3/ In the cited case the Assistant Secretary found that the Respondent, in refusing to recognize a retired employee as the Chief Representative of Chapter 003, NTEU, violated Sections 19(a)(1) and (6) of the Order.

A question then arose whether the IRS intended to appeal the Assistant Secretary's decision to the Federal Labor Relations Council. It is unclear at what point in time (during the meeting or within a few days thereafter) the Respondent informed the NTEU that the Assistant Secretary's decision (A/SLMR No. 417) would not be appealed. It is also unclear as to what Schaeffer's status was at the conclusion of the August 13th meeting; however, it is undisputed that the Respondent subsequently recognized Schaeffer as Chief Steward. Further, on several occasions subsequent to the August 13th meeting, Schaeffer acted, without restriction or interference, in his capacity as Chief Steward.

It is argued by the Complainant that notwithstanding the Respondent's defense that the position taken was only temporary and Schaeffer was never actually denied the opportunity to function as Chief Steward, the Respondent's actions of August 13 were nevertheless violative of Sections 19(a)(1) and (6) of the Order. The Respondent also maintains that Morely's statements merely expressed an opinion of management (never implemented) which standing alone do not constitute an interference with employees' rights under Section 1(a) of the Order; further, even if such statements were to be viewed as a threat, the mere utterance of a threat, without more, is not violative of the Order. NTEU argues that, to the contrary, Morely's statement did not constitute merely an opinion but a management decision which interferred with the Complainant's ability to fulfill its obligations to bargaining unit members as required by the Order. Finally, NTEU argues that, as a statement constituting a threat is in and of itself violative of the Order, it is not necessary for it to establish that Schaeffer was actually denied an opportunity to act as Chief Steward.

In view of the following, however, I find it unnecessary to reach a finding with respect to the positions of the parties as set forth above.

In the case decided by the Assistant Secretary in A/SLMR No. 417 the pertinent portion /Article 6, Section 2(B)/ of the collective bargaining agreement then in effect reads in part; "In general, the representatives /of the Union/ will be employed in the organizational segment each represents." Considering the language of the parties negotiated agreement and all the circumstances of the case the Assistant Secretary found that NTEU had not clearly and unmistakably waived the right to select its own representatives. He concluded therefore that an attempt by the Respondent to dictate the selection of the Complainant's Chief Representative, in effect, constituted an attempt to interfere improperly in the internal affairs of the

Complainant, and also constituted an improper refusal to meet and confer with an appropriate representative of the exclusive representative of its employees. Accordingly, the Assistant Secretary found that the Respondent's conduct violated Sections 19(a)(1) and (6) of the Order.

It is significant, however, that the language of the relevant section of the parties agreement then in effect differs materially from the corresponding section of the present contract which reads in pertinent part: "Stewards will be employed in the organizational segment each represents . . . ." In my view the fact that the parties in negotiating the present contract altered the language of the pertinent section, eliminating the prefatorial phrase, "In general . . .", raises the question whether the Complainant has clearly and unmistakably waived the right to select its own representatives. 4/ With that view, I find that it would not have been, and was not, unreasonable for the Respondent to assume the posture that based upon the renegotiated language of the pertinent section; i.e., the variance between the relevant section in the case previously cited and that involved herein; there existed a good faith doubt that Schaeffer could continue to be recognized as Chief Steward for NTEU. In that regard, I find that the Respondent's position of August 13, 1974, with regard to Mr. Schaeffer's status as Chief Steward was not an attempt to interfere improperly in the internal affairs of NTEU nor was there a resultant interference with employees' rights assured under Section 1(a) of the Order. Moreover, it is neither shown nor alleged that the Respondent ever refused to meet and confer with NTEU to discuss the intent of the parties in negotiating the language of the pertinent section as it is presently written. 5/ Absent such an improper interference in the

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4/ There is no intent to and I do not reach a finding as to whether NTEU, in agreeing to the present language of the relevant section, had in fact clearly and unequivocally waived its right to choose other than an IRS employee as a Chief Steward.

5/ To the contrary, it appears from the evidence submitted, that as a result of discussions between the parties in this regard the Respondent has agreed to continue to recognize the right of NTEU to choose an individual other than an IRS employee as a Chief Steward.

Additionally, the Complainant has neither shown nor alleged that the Respondent ever denied Mr. Schaeffer the opportunity to perform in the capacity of Chief Steward.

internal affairs of the Complainant and resultant interference with employee rights assured under the Order and an improper refusal to meet and confer with the Complainant relative to the terms and conditions of the parties' collective bargaining agreement, there is no basis to find that a violation may have occurred.

Having considered carefully all the facts and circumstances in this case, including the Charge, the Complaint, the positions of the parties and all that which is set forth above, the Complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than close of business February 18, 1975.

Dated at Chicago, Illinois this 5th day of February 1975.

R. C. DeMarco, Assistant Regional Director
United States Department of Labor
Labor Management Services Administration
230 South Dearborn Street, Room 1033B
Chicago, Illinois 60604

Attachment: LMSA 1139

Mr. R. T. Alfultis
Director of Personnel and
Training
Office of the Secretary of
Transportation
Washington, D. C. 20590

JUL 24 1975

Re: Department of Transportation
Federal Aviation Administration
Aircraft Services Base
Oklahoma City, Oklahoma
Case No. 63-5404(G&A)

Dear Mr. Alfultis:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability in the above-named case.

In agreement with the Assistant Regional Director, I find that, pursuant to the terms of the parties' negotiated agreement, the instant grievance is arbitrable. Thus, Article XXII, Sections (14) and (16), of the agreement provide, in effect, that if the Union is not satisfied with the Activity's decision on a grievance, it may submit the matter to an arbitrator for decision. In reaching this conclusion, I reject your contention that the instant grievance is not arbitrable because the relief sought conflicts with certain provisions of the Order and the negotiated agreement. In my view, the appropriateness of a prospective remedy is a matter which should be determined by the arbitrator. In this connection, it should be noted that a party who disagrees with an arbitrator's award has a right under Section 13(b) of the Order to file exceptions with the Federal Labor Relations Council.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Relations, Labor-Management Services Administration, U. S. Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 2200, 911 Walnut Street, Kansas City, Missouri 64106.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS
KANSAS CITY REGION

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION AIRCRAFT SERVICES BASE Oklahoma City, Oklahoma (Activity) and NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES LOCAL UNION R8-14, IND. (Applicant)	Case No. 63-5404(G&A)

REPORT AND FINDINGS ON ARBITRABILITY

Upon the filing of an Application for Decision on Grievability or Arbitrability, in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds as follows:

The Activity and Applicant are parties to a local agreement in effect from the January 26, 1973 approval by A. L. Coulter, the Federal Aviation Administration Administrator's designee, through January 25, 1975.

Article XXI, Section 2 reads, in relevant part, as follows:

> "The responsibility for sound worker-management relationships is a dual responsibility. The Employer will show proper regard for the dignity of employees and provide a work environment that is conducive to good worker morale."

On September 27, 1974, Mr. Raymond L. Rich, as President, NAGE, Local R8-14, initiated a written grievance on behalf of the local alleging a violation of the second sentence of Article XXI, Section 2, which states, "The Employer will show proper regard for the dignity of employees and provide a work environment that is conducive to good worker morale." Rich alleged that an Activity supervisor, Lee Boyles, had threatened a unit member, Francis Nix, with dismissal and physical violence, heaped verbal abuse upon him, and improperly relieved Nix of his leadman duties, all in the hearing presence of another union member, Jimmy Holcroft. Rich

demanded as remedial action an Employer guarantee that such an incident never recur, the only acceptable guarantee being the immediate removal of Boyles from any supervisory relationship of unit members.

While it is not entirely clear at what step the grievance procedure was invoked, it appears that Rich first initiated the grievance on behalf of the Union under Section 17, Article XXII of the Collective Bargaining Agreement, which provides for the filing of grievances involving disagreement between the Union and the Employer over the correct interpretation or application of the agreement. Subsequently, at the behest of management, which extended the time limits for the filing of grievances under Section 11 of Article XXII, the grievance was pursued as an individual grievance filed on behalf of Francis Nix, in accordance with Sections 11, 12 and 13 of Article XXII. From all appearances, the grievance was properly pursued through all appropriate steps of the grievance procedure, and a number of discussions and exchanges of written positions occurred in connection with the grievance. No party to the matter has asserted that the grievance was not properly pursued through the negotiated grievance procedure.

The Activity does not dispute the occurrence of the incident between Nix and Boyles and acknowledged that Boyles' improper conduct violated Section 2 of Article XXI of the contract. Boyles was disciplined and he apologized in writing to Nix. Management has also apologized and offered to reassign Nix to another unit within the branch, but refuses to remove Boyles from his supervisory position.

On December 6, 1974, Rich requested arbitration of the grievance, which had not been resolved to the satisfaction of the local. By letter of December 13, 1974, the Activity through its Representative, R. D. Gibson, Chief, Aircraft Services Base, refused the further processing of the grievance to arbitration.

The Activity contends that the grievance is not arbitrable inasmuch as the relief sought - removal of Boyles from his supervisory position over unit employees - represents an attempted incursion into rights expressly reserved to management under the terms of both Section 12(b) of the Executive Order and Article III, Section 2 of the contract, which essentially repeats the language of Section 12(b) of the Order. Section 12(b) provides, in pertinent part, that ". . . management officials of the agency retain the right, in accordance with applicable laws and regulations - (1) to direct employees of the agency; (2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees; (3) to relieve employees from duties because of lack

of work or for other legitimate reasons; (4) to maintain the efficiency of the Government operations entrusted to them; (5) to determine the methods, means, and personnel by which such operations are to be conducted; . . ."

The Activity maintains that an arbitrator would be precluded from granting the relief sought by the union since such relief would conflict with those sections of the Executive Order and the collective bargaining agreement cited above, as well as with Article XXII, Section 20 of the agreement. Article XXII, Section 20 provides that "the arbitrator shall not in any manner or form whatsoever directly or indirectly add to, detract from, or in any way alter the provisions of this Agreement."

The Activity maintains further that the grievance at hand involves a question of disciplinary action by management, which is not a subject covered by the agreement and which is therefore not an arbitrable matter. It argues also that since Boyles is a supervisor, he is outside the unit of exclusive recognition, and any actions on the part of management affecting him are outside the scope of legitimate concern of the union.

As previously noted, the Activity has not alleged that the instant matter is not grievable, or that it has not been properly processed in accordance with the negotiated grievance procedure.

Article XXII, Section 14, provides only that if the union is not satisfied with the Activity's decision it may make known its desire for submission of the grievance to an arbitrator. According to Section 15, a list of five (5) arbitrators is to be requested from the Federal Mediation and Conciliation Service within seven (7) days of the union's request. The parties are to select an arbitrator by strike-off or agreement, within five (5) days of receipt of such list.

The language of Section 16 of Article XXII is specific: "the grievance shall be heard by the arbitrator . . . ." (Emphasis supplied.)

No provision is made in the agreement for either party unilaterally to conclude that a grievance, subject to the negotiated procedure, is not also subject to its final step--arbitration.

Moreover, I have considered the Activity's contention that the grievance is not arbitrable because an arbitrator would be precluded by the Order and the negotiated agreement (Article III, Section 2, and Article XXII, Section 20) from granting the relief sought by the grievance, but I do not find this argument to be persuasive. I am unable to predict the outcome of an arbitrator's decision, or the scope or substance of any

award he might grant. In the event an award were granted by an arbitrator which the Activity felt was improper, it has the right both under the collective bargaining agreement, Article XXII, Section 16, and under Section 13(b) of the Order to file exceptions to the award with the Federal Labor Relations Council. Furthermore, this argument by the Activity presupposes that the arbitrator would find against it. To allow a party to an agreement to refuse to go to arbitration because it believes that an award granted would be improper would be to give that party unilateral power to decide the propriety of issues going to arbitration.

From my review of the facts in this case, it appears that the grievance which is the subject of this application involves, as acknowledged by the Activity, the interpretation and application of Article XXI, Section 2 of the contract. Since the negotiated grievance procedure provides that arbitration shall be invoked "if the Union is not satisfied with the decision" (at step 3 of the grievance procedure), which decision would necessarily include any corrective action proposed to resolve the grievance, I conclude that the matter at hand is one which is subject to the arbitration provisions of the existing agreement.

Having found, as set forth above, that the matter before me is arbitrable under the collective bargaining agreement, the parties are hereby advised that, absent the timely filing of a Request for Review of the Report and Findings, the parties will report to the undersigned by April 21, 1975, the action taken to implement the processing of the grievance through the arbitration procedure outlined in the collective bargaining agreement.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business on April 14, 1975.

Labor-Management Services Administration

CULLEN P. KEOUGH, Assistant Regional
Director for Labor-Management Services
Kansas City Region
Room 2200, 911 Walnut Street
Kansas City, Missouri 64106

Date: March 31, 1975

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

July 24, 1975

Captain Robert H. Haggard, JAGC 543
Judge Advocate
Military Ocean Terminal, Sunny Point
Southport, North Carolina 28461

Re: Military Ocean Terminal
Sunny Point
Southport, North Carolina
Case No. 40-6072 (G&A)

Dear Mr. Haggard:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the grievance herein over office space for union facilities involves matters concerning the interpretation and application of Article 15, Section 1 of the parties' negotiated agreement and, therefore, is subject to arbitration under the agreement. With respect to your request that the Assistant Secretary render an opinion on the propriety of the appointment of an arbitrator by the Federal Mediation and Conciliation Service pursuant to the request of the American Federation of Government Employees, AFL-CIO, Local 1708 (AFGE), it should be noted that issues that may be raised by an Application for Decision on Grievability or Arbitrability filed pursuant to Section 13(d) of the Order are whether a grievance is on a matter for which a statutory appeal procedure exists, or whether a grievance is on a matter subject to the grievance procedure in an existing agreement or is subject to arbitration under that agreement. Accordingly, a ruling on the propriety of the AFGE's conduct in this matter was not considered to be appropriate.

Based on the foregoing, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for

Labor-Management Services, Labor-Management Services Administration, United States Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 300, 1371 Peachtree Street, Northeast, Atlanta, Georgia 30309.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Military Ocean Terminal, Sunny Point
Southport, North Carolina

Activity/Applicant

and

Case No. 40-6072(AP)

American Federation of Government
Employees, AFL-CIO, Local 1708

Labor Organization

REPORT AND FINDINGS

ON

ARBITRABILITY

Upon an Application for Decision on Arbitrability having been filed in accordance with Section 205 of the regulations of the Assistant Secretary, the undersigned has completed his investigation and reports and finds as follows:

The Activity/Applicant filed a request on March 3, 1975 to determine the arbitrability of a grievance filed by the labor organization.

A three year contract effective September 25, 1974 covers approximately 160 employees of the Activity's facility. Article 4 of the contract is titled Rights and Obligations. Section 1 of Article 4 is a verbatim restatement of Section 12(a) of the Order; Section 2 of Article 4, subtitled Management Rights, consists of parts (a) through (f) and is a verbatim restatement of Section 12(b)(1) through (6) of the Order. Article 15, titled Official Facilities consists of Sections 1 through 7. Section 1 reads as follows:

> Section 1. The Employer will furnish the Union official meeting facilities within available resources. The Employer further will allow the Union a reasonable amount of space for its office equipment, generally consisting of but not limited to, one filing cabinet and one storage chest for duplicating machine.

On December 9, 1974, the labor organization filed a grievance alleging the Activity violated Article 15, Section 1 by informing the labor organization that it must relocate its office. The labor organization claimed that the space provided in the new office space is inadequate, that the space it was currently using is considered permanent and, further, the labor organization claimed it spent substantial funds on furniture and office equipment.

The Activity responded in a letter dated December 16, 1974 stating, in part, that the space presently occupied by the labor organization is far more than the Activity is "technically obligated to furnish under Article 15, Section 1 of the agreement." The Activity also cited Article 4, Section 2 of the agreement.

The labor organization in its response to the December 16, 1974 letter, responded on December 25, 1974. Its position was, in essence, a rejection of the Activity's position that Article 4, Section 2 (i.e., Section 12(b) of the Order) gives the Activity the unilaterial right "to continue harassing the union by continuous moving of the office space."

The Activity immediately responded in a letter dated December 27, 1974 in which it stated that the labor organization should advise the Activity in writing so that immediate action can be taken to resolve the matter at the next level in the grievance procedure.

The labor organization's next communication is dated January 16, 1975. That letter served as notice to arbitrate the matter in accordance with Article 26 of the agreement.1/

In its response to the labor organization's invocation of arbitration, the Activity's February 13, 1975 rejection pointed out that it would utilize Part 205 of the regulations and that until the Assistant Secretary renders his decision as to the arbitrability of the grievance, any attempt to exercise arbitration procedures would be premature and would violate management rights. The Activity's rejection of arbitration is based, on the grounds that Sections 12(b)(4) and 12(b)(5) of the Order (which is the same as Article 4, Sections 2(d) and 2(e) of the contract) gives the Activity the right to maintain efficiency of government operations and to determine the methods, means and personnel by which such operations are conducted.

The labor agreement makes reference to the Activity's obligation to furnish to the labor organization meeting facilities and to allow the labor organization a "reasonable amount of space" for its equipment. Having agreed to this in the labor agreement, the parties are entitled to a resolution of a question concerning the alleged violation of that portion of the current labor agreement. To adopt the Activity's reasoning that arbitration is unwarranted because of the retained rights provision in the Order (Section 12) would grant to the Activity the right to determine if and to what extent the management rights provisions of the labor agreement supercede the Activity's obligations under Article 15, Section 1 of the labor agreement. The Activity's position is not grounded on an unequivocal statutory provision; instead it is based on the Activity's interpretation of a contractual provision. I find that the Activity's reliance on Section 12(b) of the Order does not bar arbitration.

Based on the foregoing including the disagreement as to the interpretation and meaning of Article 15, Section 1, I find that the issue raised by the grievance is on a matter subject to arbitration under the labor agreement.

1/ Article 26, titled Arbitration consists of five (5) sections.

Section 1 reads:

> Section 1. When arbitration is invoked, the parties shall within three (3) work days request the Federal Mediation and Conciliation Service to submit a list of (5) arbitrators. The parties shall meet within three (3) work days after the receipt of the list. If they cannot agree upon one of the listed arbitrators, then the Employer and the Union will strike one name from the list alternately until one name remains. The remaining person shall be the duly selected arbitrator.

Section 2 reads:

> Section 2. If for any reason either party refuses to participate in the selection of an arbitrator, the Federal Mediation and Conciliation Service will be empowered to make a direct designation of an arbitrator to hear the case.

Pursuant to Section 205.6(b) of the Rules and Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary with a copy upon this office and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business April 24, 1975.

Labor-Management Services Administration

Assistant Regional Director
for Labor-Management Services

Atlanta Region

DATED: April 11, 1975

Attachment: Service Sheet

Mr. Missouri Hyatte
President, AFGE Local 2456
8020 New Hampshire Avenue
Hyattsville, Maryland 20783

JUL 24 1975

544

Re: General Services Administration
Region 3
Case No. 22-5757(CA)

Dear Mr. Hyatte:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-captioned case.

In agreement with the Acting Assistant Regional Director, I find that a reasonable basis for the instant complaint has not been established. In your request for review, you argue that the record demonstrates that the Respondent Activity will be unable to furnish certain records necessary to determine back pay awards if the arbitration award in issue is affirmed by the Federal Labor Relations Council. In this regard, you note that, subsequent to a claim by the Activity that it had instructed its supervisors to preserve records necessary for determining back pay, a "spot check" indicated that the records were not being kept and that no instructions had been given to supervisors to keep such records. This bare allegation, unsupported by evidence, fails to meet the burden of proof required of a complainant under the Assistant Secretary's Regulations. Moreover, in the event that the Federal Labor Relations Council upholds the arbitration award in question, the Activity will bear the responsibility of producing all necessary records under its control in connection with compliance with the award.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

March 25, 1975

Mr. Donald M. MacIntyre
National Representative
American Federation of Government
Employees, District 14,
Local 2456
8020 New Hampshire Avenue
Hyattsville, Md. 20783
(Cert. Mail No. 954669)

Re: General Services Administration
Region 3
Case No. 22-5757(CA)

Dear Mr. MacIntyre:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation revealed that, following a hearing conducted before an Arbitrator on or about February 1, 1974, a decision issued on July 19, 1974 awarding retroactive pay for certain employees and providing that, ..."All claims for back pay must be submitted to the Agency within sixty days of the receipt of this opinion." On August 12, 1974, the General Services Administration (GSA) appealed the Arbitrator's Award to the Federal Labor Relations Council (FLRC) on the basis that, inter alia, the award of retroactive pay violated applicable laws and regulations. You filed a complaint on December 31, 1974 alleging that GSA, Region 3, violated the Executive Order on the basis of its failure to comply with the arbitration award as well as its unwillingness to secure and provide its employee work assignment records relative to implementation to such award.

An appeal of an Arbitrator's Award to the FLRC is envisioned in the Labor-Management Relations Program in the Federal Service. 1/ The Activity has chosen to pursue this route. The decision of the Agency to eschew compliance during the pendency of the appeal is, therefore, not violative of the Executive Order. In addition, there is no evidence that the Agency will fail to make available records to comply with an Arbitrator's Award if the FLRC affirms such an award.

1/ Section 4(c)(3) of the Executive Order.

I am of the opinion that you have not met the burden of providing a reasonable basis for the issuance of a notice of hearing. I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business April 7, 1975.

Sincerely,

Eugene M. Levine
Acting Assistant Regional Director
for Labor-Management Services

cc: Mr. John F. Galuardi
Regional Administrator
General Services Administration, Region 3
7th and "D" Streets, SW
Washington, D.C. 20407
(Cert. Mail No. 954670)

Mr. Charles Liburd
Labor-Management Relations Officer
General Services Administration, Region 3
7th and "D" Streets, SW
Washington, D.C. 20407

bcc: Dow E. Walker, AD/WAO
ATTN: Earl Hart, AAD

S. Jesse Reuben, Deputy Dir./OFLMR

John Gribbin, Labor Relations Officer, CSC

Mr. Bennett C. Joseph, Jr.
Chief Steward, Local 491
National Federation of Federal
Employees, Ind.
P. O. Box 272
Bath, New York 14810

545

JUL 24 1975

Re: Veterans Administration Center
Bath, New York
Case No. 35-3253

Dear Mr. Joseph:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted. In this regard, I agree with the Assistant Regional Director that the primary issue involved herein is whether or not the position of Administrative Coordinator for Nursing is supervisory within the meaning of the Order. In my view, such a dispute should be resolved through the processing of a petition for clarification of unit rather than under the unfair labor practice procedures.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

March 14, 1975 In reply refer to Case No. 35-3253 (CA)

Ronald A. Gunton, President
Local 491
National Federation of Federal Employees, Ind.
PO Box 272
Bath, New York 14810

Re: Veterans Administration Center
Bath, New York

Dear Mr. Gunton:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The Complainant alleges that sometime during February, 1974, it requested a listing from management of all positions excluded from the bargaining unit. In response to this request, management furnished a listing of supervisory personnel which included a greater number of names than was specified on a similar list of exclusions drawn up originally on January 5, 1972. This apparent discrepancy was brought to the attention of the Activity and there ensued an exchange of communication on the matter between the Complainant and the Activity.

On August 28, 1974, the Complainant filed its complaint alleging violations of Sections 19(a)(3) and 19(a)(6) in that the Activity unilaterally altered the composition of the unit by adding two Administrative Coordinators for Nursing to the list of positions excluded from the unit, and in so doing demeaned the Complainant and provided significant support for a challenging labor organization.

By letter dated October 4, 1974, the Respondent contended in its answer to the complaint that pursuant to Sections 11(b) and 12(b) of the Order, it has an absolute right to determine the number of its supervisors.

The principal issue, in my view, which underlies the instant complaint in that of whether or not certain employees are supervisors within the meaning of the Executive Order. Only when this is resolved can it be determined whether the Respondent's alleged actions constituted a failure to consult, confer or negotiate in violation of Section 19(a)(6). If the Administrative Coordinator for Nursing position is in fact supervisory, then the Activity was under no obligation to consult or negotiate with the Complainant with regard to the listing of that position as excluded. Further, if the supervisory duties encompassed by the Administrative Coordinator for Nursing position have remained unchanged, notwithstanding a change in the title of the position, for a period of more than twenty years, as the Activity claims is the case in its letter of February 13, 1975, then its alleged failure to confer would be supported by the principle set forth by the Assistant Secretary in United States Department of the Navy, Naval Ordnance Station, Louisville, Kentucky, A/SLMR No. 400. In that decision, the Activity's conduct was found not to be violative of the Order when it excluded from the unit a classification of employees who were already performing supervisory functions at the time the exclusive representative was certified.

The above rationale, of course, presupposes a legitimate finding that the Administrative Coordinator for Nursing position is in fact supervisory. If the position is non-supervisory, the Activity acted at its peril in unilaterally excluding it from the bargaining unit. If this were the case, however, I find that you have submitted no evidence, beyond your own assertion, that the Activity actually took any identifiable action to exclude a previously included position. You have supported your allegation in this regard only by the statement that you "discovered that management had altered its Domiciliary organizational structure". However, no details to support the allegation of an unfair labor practice which evolved from this discovery have been submitted.

I find, however, in reviewing the several issues present in this case, that any determination with respect to the merits of your complaint must be subsumed by the prior question as to whether or not the position of Administrative Coordinator for Nursing is supervisory.

In a similar situation, the Assistant Secretary took the position that the proper vehicle for resolving disputes as to inclusion or exclusion from a unit of an employee is the processing of a petition for clarification of unit rather than the filing of an unfair

labor practice complaint.1/ Such a petition, which may be filed by either party, provides an efficient way of resolving such disputes.

With regard to the alleged violation of Section 19(a)(3), your complaint consists of an assertion that management's action in unilaterally excluding the Administrative Coordinator for Nursing position from the unit constitutes a form of assistance to another labor organization which is presently challenging the incumbent status of the Complainant.

It does not appear from the evidence submitted that you have sustained the burden of proof placed upon every complainant by the Assistant Secretary's Rules and Regulations. I note particularly that no evidence has been submitted which would tend to establish that management intended by its actions, or in fact that any action was taken, to render assistance to another labor organization or that another labor organization was in any way assisted.

I am, therefore, dismissing the complaint.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business March 27, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

1/ Department of Defense, Milwaukee, Wisconsin (50-8229).

Mr. Edward Mallet, Jr.
National Representative
American Federation of Government
Employees, AFL-CIO
2110 E. Alabama
Houston, Texas 77004

546

JUL 24 1975

Re: U.S. Department of Commerce,
Maritime Administration,
Beaumont Reserve Fleet,
Beaumont, Texas
Case No. 63-5457(CA)

Dear Mr. Mallet:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that there is insufficient evidence to establish a reasonable basis for the instant complaint. Thus, insufficient evidence was presented by the American Federation of Government Employees, AFL-CIO, Local 2413 (Complainant), that the Maritime Administration, Beaumont Reserve Fleet, Beaumont, Texas (Respondent) either threathened or accorded disparate treatment, based on union or other discriminatory considerations, to the Complainant's Chief Steward or any other employee in connection with the Respondent's policy concerning sick leave.

Accordingly, and noting that matters raised for the first time in a request for review cannot be considered by the Assistant Secretary (see Report on Ruling, No. 46, copy enclosed), your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET - ROOM 2293

816 374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

April 7, 1975

In Reply Refer to: 63-5457(CA)
Commerce-Maritime Adm./Beaumont
Reserve Fleet, Beaumont, Texas/
AFGE, LU 2413, AFL-CIO

Mr. Willis Jones, President
American Federation of Government Employees
Local Union 2413
Post Office Box 100
Mauriceville, Texas 77626

Certified Mail #341006

Dear Mr. Jones:

The above captioned case alleging a violation of Sections 19(a)(1) and (4), Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established and you have not sustained the burden of proof in accordance with Section 203.5(c) of the Regulations. In this regard, there was not sufficient evidence to substantiate your allegations that the Chief Steward of the union was threatened or that members of the union were singled out for special instructions on the use of sick leave due to their union activities.

In accordance with Section 203.2 of the Regulations, only those alleged unfair labor practices which have been included in charges to the respondent for attempted informal resolution can be considered in a complaint to the Assistant Secretary.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary, and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based, and must be received by

the Assistant Secretary for Labor Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, Washington, D. C. 20216, not later than close of business April 21, 1975.

Sincerely,

Cullen P. Keough
Assistant Regional Director
for Labor-Management Services

cc: Mrs. Edna Bee — Certified Mail #341007
Personnel Officer
U. S. Department of Commerce
Maritime Administration
Beaumont Reserve Fleet
Beaumont, Texas 77702

Mr. F. X. McNerney — Certified Mail #341008
Central Region Director
United States Department of Commerce
Maritime Administration
Washington, D. C. 20230

Mr. J. V. Bech, Fleet Superintendent — Certified Mail #341009
U. S. Department of Commerce
Maritime Administration
Beaumont Reserve Fleet
Beaumont, Texas 77702

Mr. Oscar Masters
Area Director
Labor-Management Services Administration
U. S. Department of Labor
Rm. 301, Post Office Bldg., Post Office Box 239
Dallas, Texas 75221

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

July 24, 1975

Mr. Donald M. MacIntyre
National Representative
American Federation of Government
Employees, AFL-CIO, District 14
8020 New Hampshire Avenue
Langley Park
Hyattsville, Maryland 20783

547

Re: General Services Administration
Region 3
Case No. 22-5775(CA)

Dear Mr. MacIntyre:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Assistant Regional Director, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted. In reaching this determination, it was noted particularly that the evidence establishes that the Complainant obtained all of the information it sought from management and was able to complete its investigation in a relatively short period of time.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

March 4, 1975

Mr. Donald M. MacIntyre
National Representative
American Federation of Government
Employees, AFL-CIO, District 14
820 New Hampshire Avenue
Hyattsville, Md. 20783
(Cert. Mail No. 701375)

Re: General Services Administration
Region 3
Case No. 22-5775(CA)

Dear Mr. MacIntyre:

The above-captioned case alleging violations of Section 19(a)(1) and (6) of the Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation revealed that the complaint alleged two points:

1. That GSA management violated the rights of employee Kenneth W. Morris, a complainant in Case No. 22-5570(CA), and Donald MacIntyre, his union representative, by willfully withholding necessary information which had a direct bearing on a possible violation of Section 19(a)(4) of the Order.

2. That GSA management officials prevented and delayed direct communications between the union and individuals who had information necessary and relevant to this investigation.

The evidence reveals that the union's investigation was conducted between November 4, 1974 and November 11, 1974, with a series of contacts being made with at least six management officials over the possible 19(a)(4) violation. On November 6, 1974, management gave the union the list of individual assignment of parking spaces it had requested. By November 11, 1974, the union reported its complete findings to the Agency and stated that no possible violation of Section 19(a)(4) existed.

In my view, management's conduct between November 4 and November 11, 1974 did not establish a reasonable basis for the complaint. In this regard, it is noted that the union had obtained the information it sought and completed its

investigation within a relatively short time frame. Moreover, the manner in which the investigation was conducted, i.e., contacts with six different management officials, could have led to understandable confusion and subsequent delay on the part of management.

Thus, the evidence is insufficient to establish that employee Morris or his union representative were interfered with, restrained or coerced in the exercise of their rights assured by the Order, or that management improperly failed or refused to consult, confer, or negotiate with the complainant as required by the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C., 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business March 17, 1975.

Sincerely,

Joseph A. Senge
Acting Assistant Regional Director
for Labor-Management Services

cc: Mr. John F. Galuardi
Regional Administrator
General Services Administration
Region 3
7th and D Streets, SW
Washington, D.C. 20407
(Cert. Mail No. 701376)

bcc: Dow E. Walker, AD/WAO
S. Jesse Reuben, Deputy Dir./OFLMR

Mr. Benjamin B. Naumoff
Assistant Regional Director, LMSA
U.S. Department of Labor
Room 3515, 1515 Broadway
New York, New York 10036

JUL 25 1975

Re: Defense Mapping Agency
Topographic Center
Providence, Rhode Island
Case No. 31-7566(AP)
FLRC No. 73A-60

Dear Mr. Naumoff:

On April 10, 1975, the Federal Labor Relations Council (Council) set aside the Assistant Secretary's finding that the grievance in the above case was on a matter subject to the negotiated grievance procedure and remanded the case to the Assistant Secretary for appropriate action consistent with the Council's decision.

The Council found that in reaching his decision in the matter the Assistant Secretary failed to make the "necessary determinations" and did not use the proper standard for determining whether the instant grievance was subject to the negotiated grievance procedure. The Council concluded that where such a grievability or arbitrability dispute is referred to the Assistant Secretary, he may not pass such dispute on to an arbitrator for resolution. In addition, it was noted that although the question of the applicability and effect of Article XXIV, Section 12, of the negotiated agreement on the grievability dispute was submitted to the Assistant Secretary for resolution, he made no findings in this regard. The Council found this especially significant since a determination as to whether the application of higher authority regulations is subject to the negotiated grievance procedure, without further incorporation or reference in the agreement, is essential to the disposition to the grievability issue.

In view of the Council's decision setting aside the Assistant Secretary's finding, it was concluded that the instant case should be remanded to the Assistant Regional Director for further processing. In this connection, it was concluded that the parties should be afforded the opportunity to present any additional evidence and arguments they may have concerning the following issues:

1. Whether the position of Security Specialist (General) is within the bargaining unit and, thus, is subject to Article XXI, entitled "Promotions" of the agreement.

2. Whether the subject grievance, in fact, involves the "application" of higher authority regulations.

3. Whether it was the intent of the parties to make grievable under Article XXIV, Section 12, the application of higher authority regulations without the regulations being specifically incorporated or referenced in the agreement.

Accordingly, it was concluded that the instant case should be remanded to the Assistant Regional Director for additional investigation and for either the issuance of a notice of hearing or an appropriate Supplemental Report and Finding in accordance with Part 205 of the Assistant Secretary's Regulations.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Defense Mapping Agency
Topographic Center
Providence Office,
Rhode Island

Activity - Applicant

and

Local 1884
American Federation of Government
Employees, AFL-CIO

Labor Organization

CASE NO. 31-7566 (AP)

REPORT AND FINDINGS ON GRIEVABILITY

Upon an application for a decision on grievability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds as follows:

The American Federation of Government Employees, AFL-CIO, Local 1884, hereinafter referred to as AFGE, is the exclusive representative of the following unit:

> All employees assigned to duty in the Providence Office of the Defense Mapping Agency Topographic Center except: (a) Supervisory employees (b) management officials (c) guards and (d) employees engaged in Federal personnel work in other than a purely clerical capacity.

The parties to this proceeding are also parties to a collective bargaining agreement which became effective on June 29, 1972 and terminates on June 28, 1974. The labor agreement contains a grievance and arbitration clause and conforms to the requirements of the Executive Order.

Sometime prior to October 9, 1973, the Activity posted a vacancy announcement for a new position entitled 'Security Specialist (General) 0080-11'. The position was filled sometime prior to February 1, 1974. On that date, the union filed a grievance alleging that the Activity "did in fact, commit Merit Promotion Program violations, regulatory violations and procedural violations, specifically, violations of Qualification Standards, CSC handbook XII8 and FPM 335, Promotion and Internal Placement and agency regulations".

Thereafter, the Activity and the union exchanged correspondence and on February 26, 1974, the Activity filed the instant application. The position of the Activity is that the promotion action was under the Agency Merit Promotion Plan as the position was not covered under the negotiated promotion procedure. AFGE appears to be advancing a two-fold argument:

(1) The negotiated grievance procedure should be invoked because the Activity violated the FPM, the Civil Service Commission rules, hence their action is grievable under Article XXIV, Section 12 which states in part -
> "...However, the above does not preclude grievances over the application of higher authority's regulations."

(2) As stated in a letter to the Boston Area Office, dated March 12, 1974, it appears AFGE contends that the newly created position is within the bargaining unit, hence, subject to Article XXI entitled 'Promotions'.

In submitting the application for grievability, the Activity cites Article XXI and Article XXIV, Section 1, as the pertinent sections of the agreement which require an opinion. In view of the agreement of the parties that one of the areas of contention is Article XXI, I/turn my first attention to this section of the agreement. Article XXI reads in part, as follows:

> "Promotions up to and including GS-12 positions in the Cartographic Field which are included in the Unit..."

The Activity interprets that sentence to mean that only cartographic positions are subject to the negotiated procedure and non-cartographic positions are to be filled under the Agency promotion plan, TPCPM, Chapter 12. The Activity believes the position of Security Specialist is under this latter procedure.

The union maintains that the negotiated promotion procedure covers all unit positions, not just those in the cartographic field. It buttresses this contention by arguing that Article XXI must be read in conjunction with Article I, Section 2, entitled 'Recommendation and Unit Designation', which states:

> "...the unit to which this agreement is applicable consists of all employees assigned to duty in the Activity except: (a) supervisory employees (b) management officials (c) guards and (d) employees engaged in Federal personnel work in other than a purely clerical capacity."

In further support of its position, the union resorts to the "legislative history" of Section XXI. The history of the particular clause is that

initially both parties were in agreement that the clause should be "Promotion up to and including GS-12 positions". Upon review by higher headquarters, it was pointed out there are GS-12s in the Providence office who were not cartographic employees. In order to satisfy all parties it was agreed to add the phrase "in the cartographic field which are included in the unit". The union maintains "The reference to the bargaining unit and to the cartographic field pertains strictly to the GS-12 positions... Clerical positions, maintenance positions and supervisory positions are in the unit, are not in the Cartographic field and are not GS-12 positions".

Thus, the entire controversy revolves about the interpretation to be placed upon Article XXI, with the resulting answer dictating whether the proper channel of protest is the negotiated grievance procedure or the Agency grievance procedure.

In view of the wide divergence of opinion as to the proper interpretation to be placed on Article XXI, I have no alternative but to refer the matter back to the parties for processing through the grievance and arbitration section of the contract. Section 13(a) of the Executive Order is clear and unambiguous; it requires that all agreements shall provide a procedure, applicable only to the unit, for the consideration of grievances over the interpretation or application of the agreement. Given the mandatory requirement for settling such differences pursuant to Section 13(d), the parties will submit their differences to the contract machinery for settling disputes. It should be understood by all parties that I am in no way passing on the merits of either position, nor do I intend to interpret the significance and meaning of the disputed language. I deem my function to be limited to merely ruling as to the procedure which the parties may properly invoke to resolve the conflicting interpretations as advanced by the parties. Accordingly, the parties are directed pursuant to Section 13(d) of the Executive Order to invoke the grievance procedure set forth in Article XXIV and, if necessary, the arbitration clause set forth in Article XXV in order to resolve the question as to the proper interpretation to be placed on the applicability of Article XXI regarding promotions of employees in the appropriate unit.1/

Pursuant to Section 205.5(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated

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1/ In view of my finding, I deem it unnecessary to pass upon the legitimacy of the union's attempt to invoke Article XXIV, Section 12, of the bargaining agreement which attempts to define the scope of the grievance procedure to include disputes arising out of rulings by higher authorities.

action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT" Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business May 9, 1974.

DATED: April 26, 1974

BENJAMIN B. NAUMOFF
Assistant Regional Director
Labor-Management Services

Attach: Service Sheet

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Defense Mapping Agency
Topographic Center
Providence Office,
Rhode Island

Activity - Applicant

and

Local 1884
American Federation of
Government Employees, AFL-CIO

Labor Organization

CASE NO. 31-7566 (AP)

SUPPLEMENTAL REPORTS AND FINDINGS ON GRIEVABILITY

On April 26, 1974, I issued a Report and Findings on Grievability in the instant case finding that the grievance was on a matter subject to the negotiated grievance procedure. On June 18, 1974, the decision was sustained by the Assistant Secretary. The matter was appealed to the Federal Labor Relations Council and on April 10, 1975, the Council set aside the findings and remanded the case to the Assistant Secretary for appropriate action consistent with its decision that the Assistant Secretary had not made the necessary determinations and had not used the proper standard for determining whether the grievance was subject to the negotiated grievance procedure.

On July 25, 1975, the Assistant Secretary remanded the case to the Assistant Regional Director for further processing concluding that the parties should be afforded an opportunity to present additional evidence and arguments concerning the following issues:

1. Whether the position of Security Specialist (General) is within the bargaining unit and, thus, is subject to Article XXI, entitled "Promotions" of the agreement.

2. Whether the subject grievance, in fact, involves the "application" of higher authority regulations.

3. Whether it was the intent of the parties to make grievable under Article XXIV, Section 12, the application of higher authority regulations without the regulations being specifically incorporated or referenced in the agreement.

The undersigned has completed the additional investigation and finds as follows:

A. With respect to item number one (1) above, the position of Security Specialist is within the bargaining unit; however, a dispute exists as to whether or not Article XXI entitled "Promotions" applies to all unit employees or solely to those within the "Cartographic field."

If Article XXI is interpreted to mean solely cartographic positions, the position of Security Specialist would not be covered by the promotion procedures set forth in Article XXI. Accordingly, I reaffirm my position as set forth in the Report on Findings; namely, a question exists as to the interpretation of Article XXI of the Collective Bargaining Agreement and such question must be resolved prior to determining what promotion procedure should be followed in filling the position of Security Specialist. In my view, the question of the interpretation and application of Article XXI is a matter subject to the negotiated grievance procedure.

B. With respect to item number three (3) above, the language of Article XXIV, Section 12, is clear and unambiguous as it relates to the filing of grievances over the application of higher authority regulations. Such grievances are subject to the negotiated grievance procedure and there is no evidence that the parties intended otherwise. I am not persuaded by the Activity's argument that Section 12 clearly excluded grievances over the application of higher authority regulations unless they are specifically incorporated or referenced in the agreement, nor am I persuaded that such an agreement would be contrary to Section 13 of the Order.

An examination of the agreement discloses that the language of Section 12(a) of the Order has been incorporated into the parties agreement. The language used to set forth the provisions of Section 12 of Article 24 with the exception of the last sentence was a change recommended by a higher headquarters. Hence, the parties clearly established that questions concerning the interpretation of higher authority regulations whether cited or otherwise incorporated or referenced in the agreement were precluded from being processed pursuant to the negotiated grievance procedure. On the other hand, no evidence has been adduced which would form a basis to conclude that the parties clearly intended to preclude grievances over the application of higher authority regulations unless such regulations are cited or otherwise incorporated or referenced in the agreement.

The Activity contends that Section 13 of the Order, prior to the amendments made by E.O. 11838, specifically made non-grievable grievances over higher authority regulations which were not cited nor incorporated in the agreement. A review of the Report and Recommendations on the Amendment of E.O. 11491 dated June 1971 disclosed that the Council sought to amend the Order to provide a negotiated grievance concerning matters involving only the interpretation or application of the negotiated agreement and not involving matters outside the agreement.

In my view the Council did not limit the negotiated grievance procedures to matters specifically cited or incorporated in the agreement but merely delineated the scope of the negotiated grievance procedure.

Accordingly, I conclude that the failure to specifically cite, incorporate or reference higher authority regulations in the agreement is not a sufficient basis, standing alone, which would make such an agreement contrary to the Order as it existed prior to the amendments of E.O. 11838.

The Federal Labor Relations Council in its explanation of the recommendation which led to the amendment of Section 13 of the Order stated in part: 1/

The major problems which have arisen concerning the implementation of Section 13 have centered on the meaning of the phrase "any other matters." Some agencies and labor organizations have sought a precise delineation of such "matters." This has

1/ Labor Management Relations in the Federal Service (1975) pp 45-51.

not been possible. Once matters covered by statutory appeal procedures have been excluded from the coverage of all negotiated grievance procedures, those remaining "other matters" which are also excluded vary from unit to unit depending upon the scope of the grievance procedure negotiated in each unit and by the nature and scope of the remaining provisions in the negotiated agreement itself. Therefore, a general definition of "any other matters" which would be uniformly applicable throughout the program is not possible.

Based upon the foregoing, I reject the Activity's conclusion that the parties intended solely to limit grievances over the application of higher authority regulations to those specifically cited, incorporated or referenced in the agreement. Moreover, I do not agree that such a finding subjects a wide range of higher authority regulations to the negotiated grievance procedure. Matters which are beyond the scope of bargaining would not be subject to the negotiated grievance procedure, nor would matters which would violate Section 12(b) of the Order or matters otherwise excluded per Section 11(b) of the Order. In addition, a final decision on such grievances would have to be consistent with applicable law, appropriate regulation of the Order. 2/

Accordingly, I conclude that the parties did not intend to exclude from the negotiated grievance procedure, grievances over the application of those higher authority regulations not cited or referenced in the agreement insofar as the grievance deals with matters within the Activity's discretion and which affect working conditions of employees within the unit provided applicable clauses of the agreement are subject to such higher authority regulations.

With respect to item two (2) above, an analysis of the grievance as stated in the exclusive representative's letter of February 1, 1974 discloses that the grievance concerns the proper application of higher authority regulations. Specifically, the grievance alleges the following:

A. The Providence Office, DMATC, in promoting Mr. Hagop Dasdaguilian to the position of Security Specialist Qualification Standards, CSC Handbook X118 and FPM 335, Promotion and Internal Placement and agency regulations by failing to make the promotion on the basis of qualification, merit and fitness.

B. The highly qualified rating factors cited in vacancy announcement No. PVO 73-5 were tailored to Mr. Dasdaguilian.

Grievant contends that the grievance "radiates" primarily from preselection and includes violations of procedures established in Article XXI of the agreement. An examination of Article XXI entitled Promotions discloses that it sets forth certain procedures to be followed in filling vacant positions; however, there is no section within Article XXI which the Activity has violated or may reasonably be considered to have violated which pertains to the issues set forth in the grievance. As stated with respect to item three (3), the application of higher authority regulations applicable to specific provisions of the agreement would be grievable insofar as the grievance concerns matters within the Activity's discretion and which affect working conditions.

In the instant case, the aggrieved employees withdrew their applications prior to the selection and apparently prior to the evaluation process maintaining that the evaluation methods utilized were biased, and arbitrary determinations were made in filling the position.

2/ Bureau of Prisons and Federal Prison Industries Inc., Washington, D.C. and Council of Prison Locals, AFGE, FLRC No. 74A-24, June 10, 1975, Volume 74.

In view of the evidence before me, I must conclude that the grievance does involve an application of higher authority regulations, however, the grievance does not allege nor have I been able to find any provision of the agreement which has been violated by the alleged failure to properly apply the disputed higher authority regulations.

I, therefore, conclude that the grievance is not on a matter subject to the negotiated grievance procedure.

Having concluded that the grievance is not subject to the negotiated grievance procedure, I hereby amend my Report and Findings on Grievability consistent with my findings above.

Pursuant to Section 205.5(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATTN: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business November 13, 1975.

DATED: October 29, 1975

BENJAMIN B. NAUMOFF
Assistant Regional Director
Labor-Management Services

Attach: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

7-25-75

549

Mr. Gary Landsman
Staff Counsel
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Avenue, N. W.
Washington, D. C. 20005

Re: Headquarters, Ogden Air Logistics Center
Hill Air Force Base
Ogden, Utah
Case No. 61-2482(CA)

Dear Mr. Landsman:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the instant complaint has not been established. Thus, I find that the American Federation of Government Employees, AFL-CIO, Local 1592 (AFGE), did not present sufficient evidence to establish a reasonable basis for the allegation that Main Headquarters, Air Force Logistics Command's policy regarding 1974 holiday leave schedules modified or superseded specific provisions of the existing negotiated agreement between the AFGE and Headquarters, Ogden Air Logistics Center, Hill Air Force Base, Ogden, Utah (Respondent). Compare Department of the Navy, Supervisor of Shipbuilding, Conversion and Repair, Pascagoula, Mississippi, A/SLMR No. 300.

Accordingly, and noting that the Respondent met on numerous occasions with the AFGE and conferred with the latter regarding the implementation and impact of the holiday leave policy, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

February 21, 1975

Mr. Neil B. Breeden, President
American Federation of Government Employees
Local 1592, AFL-CIO
1992 North 400 West
Sunset, Utah 84015 Certified Mail #346131

Mr. William E. Wade, National Representative
American Federation of Government Employees
96 North Lakeview Drive
Clearfield, Utah 84015 Certified Mail #346132

Re: Headquarters Ogden Air Logistics Center,
Hill Air Force Base, Utah
AFGE Local 1592, AFL-CIO
Case No. 61-2482-CA

Gentlemen:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted.

Allegations in numbered paragraphs 2, 3, 5, 6 and 7 contained in item 3 of the amended complaint are set forth below:

Paragraph 2: "Management unilaterally proposes to change the working conditions and through this change it would not be applied on a uniform basis to all employees within the bargaining unit."

Paragraph 3: "Management is unilaterally proposing to change the personnel policies, practices, and/or working conditions without prior consultation on the impact this would have with the employees of the bargaining unit."

Paragraph 5: "The Hill AFB Holiday Phase Down Plan is not being applied uniformly with the plans being proposed by the other ALC's. Hill AFB proposed plan would require a work force of 14% civilian and 49% military. It is evident that military personnel may be required to be used as a substitution for the civilian employment."

Paragraph 6: "During the period of 15 April, 1974, through 28 June, 1974, Management failed to negotiate in good faith on appropriate matters such as annual leave, leave without pay, and working conditions. Management did not submit any proposals even though they were aware of the fact that the Holiday Phase Down Plan would be contrary to what they were negotiating in the contract."

Paragraph 7: "It is true that Management has conferred with the Union at various times. The Union has been given written directives and asked to comment after the fact and not prior to the implementation of the directives."

A careful review of the complaint, amended complaint and all of the attachments thereto has failed to disclose that any precomplaint charge regarding the above-mentioned allegations was filed pursuant to Section 203.2 of the Regulations.

Paragraph 1: "Management is guilty of unilaterally changing the employment conditions where that action has the effect of evidencing to the employees that the agency can act unilaterally without consulting with the recognized Labor Organization."

Although a precomplaint charge was filed on August 28, 1974 with relation to this allegation, it lacks the required specificity of Section 203.3(a)(3) of the Assistant Secretary's Regulations. Additionally, a reasonable basis for the complaint has not been established as required by Section 203.14 of the Regulations.

Paragraph 4: "Management is unilaterally proposing to change the working conditions and make the changes inconsistant (sic) with the terms of the collective bargaining agreement."

This paragraph alleges a contract violation and is not properly before me for decision since Section 13(a) of the Order provides that the grievance and arbitration procedure of the collective bargaining agreement "...shall be the exclusive procedure available to the parties and the employees in the unit for resolving such grievances."

I have noted that in each and every instance, your allegations lack the specificity required by Section 203.3(a)(3) of the Regulations in that you have failed to provide a clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section and subsection of the Order alleged to have been violated, the names and addresses of the individuals involved, and the time and place of occurrence of the particular acts.

For the reasons set forth above, I will grant Respondent's MOTION TO DISMISS THE AMENDED COMPLAINT dated November 25, 1974 and dismiss the complaint in its entirety.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 14th Street and Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business March 6, 1975.

Sincerely,

Cullen P. Keough
Assistant Regional Director for
Labor-Management Services

cc: Mr. S. Reed Murdock, Attorney-Advisor
Ogden Air Logistics Center — Certified Mail #346133

Major Noland Sklute
Litigation Division, USAF — Certified Mail #346134

Mr. Alva W. Jones, Area Director
U. S. Department of Labor
Labor-Management Services Administration
2320 Federal Office Building
1961 Stout Street
Denver, Colorado 80202

Mr. George M. Burchfield
President
American Federation of Government
Employees, AFL-CIO, Local 1858
Building 3648
Redstone Arsenal, Alabama 35809

JUL 25 1975

Re: U.S. Army Missile Command (MICOM)
Redstone Arsenal, Alabama
Case No. 40-5739

Dear Mr. Burchfield:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that your objections in the instant case are without merit. It was noted that you offered no evidence to support your allegation that the eligibility list herein was modified. With respect to your allegation that the U.S. Army Missile Command, Redstone Arsenal, Alabama (Activity) unreasonably and illegally removed from the voter eligibility list the names of two hundred and thirty-six employees whom it considered to be supervisors, the evidence reveals that the Activity posted Notices of Election in various locations notifying employees who did not receive a secret ballot package how they could do so if they considered themselves eligible to vote.

Accordingly, and noting that there is no evidence that any employee requested and was refused a ballot, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Department of the Army
U. S. Army Missile Command
Redstone Arsenal, Alabama

Activity

and

Case No. 40-5739(RO)

Local 1858, American Federation
of Government Employees, AFL-CIO

Petitioner

REPORT AND FINDINGS

ON

OBJECTIONS

In accordance with the provisions of the Agreement for Consent or Directed Election approved on December 6, 1974, a secret election by mail ballot was conducted under the supervision of the LMSA Area Director, Atlanta, Georgia, on January 23, 1975.

The results of the election, as set forth in the Tally of Ballots, are as follows:

Approximate number of eligible voters	1192
Void Ballots	12
Votes cast for exclusive recognition	302
Votes cast against exclusive recognition	369
Challenged ballots	29
Valid votes counted plus challenged ballots	700

Challenged ballots are not sufficient in number to affect the results of the election.

Timely objections to the procedural conduct of the election and conduct improperly affecting the results of the election were filed on January 30, 1975 by the Petitioner. The objections are attached hereto as Appendix A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the LMSA Area Director has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to each of the objections involved herein:

Objection Number 1

> The pre-determination by MICOM officials that the names of approximately 238 employees would be eliminated from the initial list of eligible professional employee voters, is considered an unreasonable and illegal action...

The Petitioner asserts that although it "recognizes and agrees" that supervisors were excluded from the "bargaining prospectus" (Consent Agreement), the fact that the Activity subsequently challenged the ballots of approximately 14 voters, whose names did not appear on the list of eligible voters "...creates a strong element of doubt..." whether the employees who were excluded from the voting list qualify as supervisors within the meaning of Section 2(c) of the Order.

In support of this objection the Petitioner has submitted one (1) position description and a statement signed by twenty employees asserting their non-supervisory status and alleging that they were deprived of their right to vote in the mail ballot election.

The Activity takes the position that the Petitioner and the Activity met on January 3, 1975 "to review a proposed listing of eligible voters for a representation election to be held at MICOM during the period January 7, 1975 through January 23, 1975." The computerized list which was used during the discussion between the parties contained the names of 236 employees who the Activity considered to be supervisors as defined in the Order. The Activity maintains that the Petitioner agreed to the supervisory status of these employees based upon a review of their position descriptions as well as various Federal Labor Relations Council's decisions relating to the definition of supervisor under the Order.1/ Moreover, the Activity asserts that the final eligibility list used in the mail ballot election was signed on January 7, 1975 by the Petitioner and was "...identical to the one reviewed..." and agreed upon on January 3, 1975.

Investigation reveals that on December 4, 1974, a Consent Agreement conference was held, attended by LMSA representatives, at which the parties signed a Consent Agreement regarding all details of the election. The LMSA Area Director approved the Consent Agreement on December 6, 1974 which provided for an all mail ballot election. On January 3, 1975, the parties met to review the proposed listing of eligible voters in a unit of all professional employees and both parties signed the official eligibility list which was used to check off the names and addresses of employees who were eligible to receive a mail ballot. The ballots were mailed on January 7, 1975 in the presence of an LMSA representative and neither of the parties raised objections in regard to the completeness and/or accuracy of the official eligibility list. In addition, twelve (12) employees who were not on the eligibility list were sent a ballot, at their request. These ballots were subsequently challenged by the Activity.

Section 202.7 of the Regulations of the Assistant Secretary, provides that parties "...may agree that a secret ballot election shall be conducted among the employees in the agreed-upon appropriate unit..." and that "the parties shall agree on the eligibility period for participation in the election... and other related election procedures" (Emphasis supplied). Where, as here, the Area Director approves an Agreement for Consent or Directed Election, orderly processing of the election procedures requires that the matters agreed upon by the parties be adhered to. Such requirement applies equally with respect to the agreement of the parties regarding the exclusion - as well as the inclusion - of particular employees from the list of those eligible to vote, in accordance with the description of the appropriate unit.

The Activity asserts, and the Petitioner presented no evidence to the contrary, that on January 3, 1975, representatives of both parties agreed to the exclusion of a total of 236 employees as being supervisors within the meaning of Section 2(c) of the Order. This agreed-upon list, initialed by the parties, served as the official eligibility list in mailing the ballots to the employees on January 7, 1975. Petitioner has not submitted any evidence, either newly discovered or which was not available at the time of the execution of the Consent Agreement on December 4, 1974, or as of January 3, 1975, which would warrant consideration of Petitioner's contentions regarding the alleged improper exclusion of the 236 employees involved. The submission by the Petitioner of a single job description as well as the statement signed by certain employees alleging deprivation of their voting rights, does not constitute the required showing of newly discovered evidence and, therefore, cannot be considered. In the absence of such a showing, the parties must be held to their agreement regarding the exclusion of the 236 employees involved herein, as being supervisors within the meaning of Section 2(c) of the Order, as amended. I find, therefore, that the objection is without merit.

1/ Petitioner, by letter dated February 26, 1975, received by the Area Director on March 3, 1975, set forth several comments to the Activity's letter, dated February 10, 1975. However, no provision is made in the Regulations for a reply by a party. Therefore, Petitioner's comments cannot be considered.

Accordingly, Objection No. 1 is hereby overruled.

Objection Number 2

As a further objection, Petitioner asserts,

> Another matter...is the number of challenged ballots... by personnel employed in the Legal Department of MICOM. Under the definition of a professional, as determined by the Assistant Secretary...the Union agrees that employees of a government legal establishment, who are active members of the BAR of any State of the U.S., are professionals. However, this understanding would eliminate the assignment of legal assistants and legal aids (sic) to the ranks of professionals. Furthermore, the enlistment of legal type employees as management personnel is also challenged....

With respect to this objection, Petitioner indicates2/ that although the names of the legal assistants and legal aides employed in the Legal Department of the Activity were included in the agreed-upon eligibility list, the ballots cast by such employees were challenged by the Activity as not being professional employees. Petitioner contends that these challenged ballots cast by the legal aides and/or assistants should have been resolved during the ballot count as being cast by eligible employees and opened and counted. Petitioner also questions whether certain "legal type" employees are management officials subject to exclusion from the agreed-upon unit.

The Activity takes the position that of the twenty-nine (29) challenged ballots, twelve (12) were cast by employees who were excluded from the eligibility list, based on supervisory status. These employees received ballots only upon "...their written request...". The Activity takes no position with respect to the other portions of this objection.

The Tally of Ballots reveals that the challenged ballots, totalling 29, are not sufficient in number to affect the results of the election. It may be noted that the challenged ballots cast by the legal aides and/or assistants comprised only a portion of the total number of challenged ballots. Under established procedures, notwithstanding the agreement of the parties regarding the inclusion of particular employees on the eligibility list, any party to an election conducted pursuant to a Consent Agreement may raise a challenge to the ballot cast by an employee whose name appears on the eligibility list. Moreover, if, during the counting of the ballots, the parties are unable to agree upon the eligibility of a voter whose ballot has been challenged, the ultimate disposition of such challenged ballot(s) will depend upon whether or not the total number of challenged ballots is sufficient in number to affect the results of the election. Where, as here, the total number of challenged ballots is not determinative of the results of the election, no further action is taken.

With respect to the remaining portion of this objection, Petitioner questions the Activity having challenged the ballots of certain employees as being management officials. For the reasons set forth above, such contention cannot be considered inasmuch as the challenged ballots of the employees involved are not determinative of the results of the election.

Based upon the foregoing, I find Objection Number 2 to be without merit, and accordingly, Objection Number 2 is hereby overruled.

Having found that no objectionable conduct occurred improperly affecting the results of the election, the parties are advised hereby that a Certification of Results of Elections will be issued by the Area Director, absent the timely filing of a request for review.

2/ Petitioner was requested during the course of the investigation to clarify the meaning of this objection.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business March 17, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Assistant Regional Director
for Labor-Management Services

DATED: March 4, 1975

Attachment: Service Sheet
Appendix A

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
8-11-75

551

Ms. Gene Bernardi
9 Arden Road
Berkeley, California 94704

Re: United States Department of
Agriculture
Forest Service
Berkeley, California
Case No. 70-4668(CA)

Dear Ms. Bernardi:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant complaint alleging violations of Section 19(a)(1), (2) and (4) of the Executive Order, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

May 7, 1975

Ms. Gene Bernardi
9 Arden Road
Berkeley, California 94704

Re: USDA, Forest Service, Berkeley -
Gene Bernardi
Case No. 70-4668

Dear Ms. Bernardi:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In your complaint it was alleged that Respondent threatened to take certain action with respect to the time and attendance records of Albert Wright, Sergeant-at-Arms of the Local, and yourself as Local President, by your unauthorized use of official time to discuss a grievance. The investigation indicates that the Respondent, in fact, took no corrective action and, further, that Respondent's announced intention of instituting such corrective action was prompted by an apparent unauthorized use of official time. In these circumstances, and since there is no evidence of union animus, it is concluded there is not a reasonable basis to conclude Respondent's actions constitute violations of Sections 19(a)(1), (2) and (4) of the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business on May 20, 1975.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Assistant Regional Director/LMSA

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-11-75

552

Mr. Thomas F. O'Leary
President, American Federation
of Government Employees Local 2433
P. O. Box 3037 - Lennox Branch
Inglewood, California 9-3-4

Re: Defense Supply Agency
Defense Contract Administration
Services Region
Los Angeles, California
Case No. 72-4946

Dear Mr. O'Leary:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (4), (5) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director and based on his reasoning, that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

March 19, 1975

Mr. Thomas F. O'Leary, President
American Federation of Government
Employees, LU 2433
524 1/2 North Guadalupe Avenue
Redondo Beach, California 90277

Re: DCASR, Los Angeles -
AFGE, LU 2433
Case No. 72-4946

Dear Mr. O'Leary:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It is alleged that Respondent violated Sections 19(a)(1),(4),(5) and (6) by denying steward Audrey Addison time in which to investigate employee grievances, by discriminating against Addison with regard to production standards, by soliciting anti-union statements from employees and by refusing to meet and confer with Addison in her capacity as union steward.

The investigation disclosed that Addison requested that she be excused from her normal work duties in order to prepare certain employee grievances and that the requested time was granted for the following day. It was also disclosed that the Union demanded that the Respondent reduce to writing this permission granted Addison. It is concluded there is insufficient evidence that the Respondent violated Sections 19(a)(5) and (6) of the Order since it appears the delay in granting Addison time off from her normal work duties was due to production requirements, and this delay, as well as the refusal to reduce to writing the permission granted Addison, do not constitute a rejection by Respondent of its obligation to meet and confer with the Union.

The investigation also disclosed that Addison received training designed to assist her in meeting production standards and there is insufficient evidence that Respondent applied the production standard disparately with regard to Addison in violation of Section 19(a)(4) of the Order.

Finally, no evidence was submitted by Complainant in support of its contention that Respondent solicited anti-union statements from employees in violation of Section 19(a)(1) of the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business on April 1, 1975.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Assistant Regional Director/LMSA

Mr. H. C. Summers
Grand Lodge Representative
International Association of Machinists
and Aerospace Workers, AFL-CIO
504 Glenn Building
120 Marietta Street, N.W.
Atlanta, Georgia 30303

553

AUG 13 1975

Re: Naval Air Rework Facility
Naval Air Station,
Jacksonville, Florida
Case No. 42-2744(CA)

Dear Mr. Summers:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

I find that a reasonable basis for the Section 19(a)(1) and (4) allegations in the instant complaint has been established, and that factual issues have been raised which can best be resolved by a hearing.

Accordingly, your request for review is granted, and this case is remanded to the Assistant Regional Director, who is directed to reinstate the complaint and, absent settlement, to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

March 10, 1975

Mr. H. C. Summers
Grand Lodge Representative
International Association
of Machinists and Aerospace Workers, AFL-CIO
504 Glenn Building
120 Marietta Street, N. W.
Atlanta, Georgia 30303

Re: Naval Air Rework Facility
Naval Air Station
Jacksonville, Florida
Case No. 42-2744(CA)

Dear Mr. Summers:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The complaint alleges violation of Section 19(a)(1) and (4) of the Order in that Leroy Polson was arbitrarily assigned to, and subsequently removed from, the "B" shift, warned of an impending unsatisfactory performance rating and transferred from Shop 94242 to Shop 94243. The complaint alleges, further, that the Activity thereby discriminated against Leroy Polson because of his having exercised certain rights guaranteed by the Order. Investigation indicates that the rights exercised relate to the filing of certain unfair labor practice complaints against the Activity by Polson in December, 1973.

With respect to the various actions set forth in the complaint, the Activity states, in substance, that, (1) the initial transfer of Polson to the "B" shift was in accordance with a long-standing rotation program for the employees of shop 94242; (2) Polson's reassignment to the "A" shift was made in order to provide him with closer supervision so that he might improve his work performance; (3) a memorandum was issued on July 27, 1974 indicating the need for improved work performance and (4) the transfer from shop 29242 to shop 29243 was within Polson's job rating and for the purpose of assisting him in maintaining his work performance at a satisfactory level. No evidence was presented to dispute the position taken by Activity.

In addition, no evidence was submitted to support the allegation that the Activity's conduct was based upon the fact that Polson had filed certain unfair labor practices complaints against the Activity. Section 203.14 of the Regulations provides that the Complainant has the burden of proving the allegations of the complaint. Where such burden of proof is not met, as in the matter of Air Force Communications Service (AFCS), 2024th Communications Squadron, Moody AFB, Georgia, A/SLMR No. 248, the complaint must be dismissed.

On the basis of the investigation, I conclude that a reasonable basis for the complaint has not been established as required by Section 203.5(c) of the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C., 20210, not later than the close of business March 24, 1975.

Sincerely yours,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

CC: Captain C. B. Boeing
Commanding Officer
Naval Air Rework Facility
Naval Air Station
Jacksonville, Florida 32212

Mr. Leroy Polson
3036 College Street, Apt. 1
Jacksonville, Florida 32205

Mr. Elbert C. Newton
Labor Relations Advisor
Regional Office of Civilian Manpower Management
Naval Air Station
Jacksonville, Florida 32212

Ms. G. Nancy McAleney, President
American Federation of Government
Employees, Local 225
Building 1610
Picatinny Arsenal
Dover, New Jersey 07801

554

Re: U.S. Department of Army
Picatinny Arsenal
Dover, New Jersey
Case No. 32-3619(RO)

AUG 13 1975

Dear Ms. McAleney:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the objection to the election filed by the American Federation of Government Employees, AFL-CIO, Local 225, in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find no merit to the objection in this matter. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the objection to the election in the instant case, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

U.S. DEPARTMENT OF ARMY
PICATINNY ARSENAL
ACTIVITY
AND

LOCAL 1437, NATIONAL
FEDERATION OF FEDERAL EMPLOYEES
PETITIONER
AND

LOCAL 225, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
INTERVENOR

CASE NO. 32-3619(RO)

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on February 20, 1975, an election by secret ballot was conducted under the supervision of the Area Director, Newark, New Jersey on March 12, 1975.

The results of the election, as set forth in the Tally of Ballots, are as follows:

Approximate number of eligible voters	1400
Void ballots	1
Votes cast for Local 1437, NFFE	449
Votes cast for Local 225, AFGE	181
Votes cast against exclusive recognition	138
Valid votes counted	768
Challenged ballots	2
Valid votes counted plus challenged ballots	770

Challenged ballots are not sufficient in number to affect the results of the election.

Timely objections to conduct of the election were filed on March 18, 1975 by the Intervenor. The objections are attached as Appendix A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Director has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to the objections involved:

OBJECTION NO. I

Intervenor alleges that Petitioner during its campaign distributed flyers the contents of which "caused a serious misrepresentation of the issue before the voter" by creating the impression "that the voter would not be voting for a union but rather for an association for professionals."

Specific examples of the alleged objectionable flyers appear as appendices B and C. The alleged objectionable portions of these flyers, according to the Intervenor are as follows:

1. Paragraph 2 of one flyer (Appendix A) states, "NFFE Local 1437, last year founded a branch, the Picatinny Arsenal Professional Association (PAPA) to represent and negotiate specifically for professionals."

2. The signatures on both flyers which appear jointly as "J. RICHARD HALL, Ph. D., President Local 1437 NFFE and WILLIAM G. MUTH, P.E., Chairman, PAPA."

According to the Intervenor, the Petitioner through the use of the above "deceptive technique of campaigning" was actually campaigning as a Professional Association, namely, "Picatinny Arsenal Professional Association." This deception, according to the Intervenor did not start during the campaign but began when the Petitioner petitioned for the election. Intervenor maintains that the employees expressing an interest in the Petitioner signed petitions requesting an election on behalf of the Picatinny Arsenal Professional Association although the name of the association did not appear on the LMSA 60 petition form.

By letter dated March 21, 1975, Intervenor was requested to submit any additional evidence and furnish a detailed statement concerning the objections. Each of the other parties was requested to furnish a detailed statement of its position concerning the objections. By letter dated March 31, 1975, Intervenor advised that it had submitted all available evidence; however, it contended that a major policy issue has been raised concerning the limits to which a labor

organization can petition and campaign under a name different from the one under which they are chartered.

According to the Petitioner the Picatinny Arsenal Professional Association is a branch of Local 1437, NFFE and under the Constitution of the National Federation of Federal Employees it has a right to form branches. This branch was formed by Local 1437, NFFE on April 3, 1974. Petitioner also states that Local 1437, NFFE is duly chartered as a local by NFFE and is in compliance with E.O. 11491, as amended, and the Assistant Secretary's regulations.

Petitioner states that no deception was used in the election campaign as every piece of literature was clearly marked NFFE or NFFE, Local 1437. It states that only two (2) of the eight flyers used in its campaign mentioned the Picatinny Arsenal Professional Association and in one of these only the initials "PAPA" appeared.

By letter dated April 8, 1975, Petitioner in response to Intervenor's letter of March 31, 1975, objects to the Intervenor's raising of an issue concerning the validity of its showing of interest and also maintains that the major policy issue raised by the Intervenor in its letter of March 31, 1975 is untimely and cannot be raised as an objection. 1/

According to the Activity NFFE, Local 1437, did not in any way, misrepresent itself as being solely a professional association. Activity states that the title "NFFE, Local 1437" was prominently displayed on all of NFFE's handouts. Concerning the two (2) handouts the Intervenor objected to, the Activity states that "National Federation of Federal Employees" was prominently displayed in large letters across the top. One handout had only the initials PAPA in the signature block, and the other handout explicitly states that NFFE is "the oldest independent union for federal employees".

The Activity also states there was sufficient publicity generated concerning both unions to leave no doubt that the election was for the purpose of choosing between two (2) equivalent rival unions or neither union in order to determine which, if any, would serve as exclusive representative for the professional unit.

1/ Section 202.2(f)(2) of the Regulations provides that challenges concerning a petitioner's showing of interest must be filed within ten (10) days after the initial date of posting of the notice of petition. As no such challenge was filed, the issue cannot be raised as an objection to the conduct of the election.

Intervenor has not raised any new objection in its letter of March 31, 1975.

The Activity further states that on March 3, 1975 it issued a DF (Disposition Form) to all employees of Picatinny Arsenal explaining that an election would take place on March 12, 1975 and that "professional employees not already represented by a union with exclusive recognition will decide if they wish to be represented by NFFE, Local 1437 (Independent) or AFGE, Local 225, or neither.

The Activity adds that it posted the Notices of Election and Voter Guides which contained instructions and clarification as to the purpose of the election and the parties involved. The Notice of Election contained a sample ballot which specified the parties involved with NFFE shown as NFFE Local 1437.

Activity maintains that NFFE was correctly identified as a labor organization through out the campaign and no confusion resulted from the reference to PAPA.

CONCLUSION

The relevant facts as to the alleged objectionable portions of the flyers are not in dispute. There is no dispute concerning the distribution of the objectionable flyers nor is there any dispute as to their contents. 2/

Investigation has disclosed that each of the objectionable flyers has the following in bold, capital letters across the top:

"NATIONAL FEDERATION OF FEDERAL EMPLOYEES
SERVING FEDERAL EMPLOYEES...AND THE NATION...SINCE 1917"

Directly beneath this caption appears "LOCAL 1437."

Examination of six (6) additional pieces of campaign literature distributed by Petitioner discloses that each piece was clearly marked "NFFE" or "NFFE Local 1437" - there was no mention of the Picatinny Arsenal Professional Association or PAPA.

Examination of a piece of campaign literature distributed by the Intervenor disclosed the following:

"Don't be misled by the other union's claim that they are the professional union or association. They are a UNION..."

2/ Intervenor has furnished no evidence which would disclose when the alleged objectionable flyers were distributed; however, in view of my disposition of this objection such evidence is not relevant.

"AFGE already has professional representation on its Executive Board and plans to set up a separate professional unit with its own Vice-President if we are successful in the election..."

A relevant consideration, in the instant case, as to whether the election should be set aside is whether or not there has been a misrepresentation which involves a substantial departure from the true facts which may reasonably be expected to have a significant impact on the election and if so whether the party prejudiced by the misrepresentation had sufficient information within its knowledge to make an effective reply and had an adequate opportunity to do so. 3/

Intervenor does not allege nor is there any evidence upon which one could conclude that the contents of the objectionable portions of the flyers represent a substantial departure from the truth. Intervenor does not contend that the Picatinny Arsenal Professional Association is nonexistent nor does it contend that WILLIAM G. MUTH is not the Chairman of the Association. Intervenor's basic objection lies not with the truth or falsity of the objectionable portions of the flyers but rather with the knowledge of the voter to independently evaluate the contents as being nothing more than mere campaign propaganda.

Examination of the flyers containing the alleged objectionable information discloses that Petitioner was clearly campaigning as NFFE Local 1437 and not as a professional association. The objectionable portions when considered in light of the total contents of the flyers are not ambiguous or misleading and are nothing more than self-serving campaign literature which could easily be evaluated by the voters.

Assuming arguendo that the alleged objectionable portions were misrepresentations which may have affected the free choice of the voters I still find no basis for setting aside the election. Intervenor by its own admission maintains it had knowledge of the alleged misrepresentation at the time the representation petition was filed contending that the "Picatinny Arsenal Professional Association" appeared on each of the petition pages used by the petitioner to obtain its showing of interest. 4/

3/ Department of the Army Military Ocean Terminal, Bayonne, New Jersey A/SLMR No. 177; NON-APPROPRIATED FUND ACTIVITIES, XVIII Airborne Corps and Ft. Bragg, Ft. Bragg, North Carolina, A/SLMR No.284

4/ Representation petition was filed May 29, 1974 and amended July 5, 1974. Although Intervenors contends that it questioned the validity of the petition signatures submitted by the Petitioner, no written challenge was ever filed with the Area Director challenging the validity of the petitioner's showing of interest. A review of the petitioner's showing of interest discloses that a valid 30% showing had been submitted in support of its petition.

Accordingly, I find that the Intervenor had sufficient information within its knowledge to make an effective reply, had ample opportunity to do so and in fact actually did respond to the issue in its own campaign literature advising the voters that they should not "be misled by the other union's claim that they are the professional union or association".

Based upon the foregoing I conclude that no improper conduct occurred affecting the results of the election. Accordingly the objection is found to have no merit. I also conclude that no major policy issue has been raised by this objection.

Having found that no objectionable conduct occurred improperly affecting the results of the election, the parties are advised hereby that a Certification of Representative in behalf of Local 1437, National Federation of Federal Employees will be issued by the Area Director, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business May 12, 1975.

Dated: April 28, 1975

BENJAMIN B. NAUMOFF
Assistant Regional Director for
Labor-Management Services
New York Region

PICATINNY ARSENAL

LOCAL 225

American Federation of Government Employees

Affiliated With A.F.L. - C.I.O.

BLDG. 1610 PICATINNY ARSENAL
DOVER, NEW JERSEY 07801

PRESIDENT
G. Nancy McAleney

Phone: 201-328-5116

17 March 1975

Mr. Thomas P. Gilmartin
Area Director
Labor-Management Services Administration
U. S. Department of Labor
9 Clinton St., Room 305
Newark, New Jersey 07102

Dear Sir:

In accordance with our rights under Section 202.20 (b) of the Regulations of the Assistant Secretary for Labor-Management Relations, AFGE Local 225 is filing an objection to the representation election held at Picatinny Arsenal, Dover, N.J. on 12 March 1975 (Case No. 32-3619 (RO). This election objection is concerned with the question of whether a union can campaign under the name of an association not chartered as a labor organization. This question is of major importance because the use of the name of an association caused a serious misrepresentation of the issue before the voters. What must be remembered is that the election involved a unit of professionals, employees who traditionally are not receptive to the concept of a union. Our opposition, NFFE Local 1437, overcame this through the deceptive technique of campaigning as the "Picatinny Arsenal Professional Association". Inclosure 1 illustrates the use of this tactic. Paragraph 2 of the first flyer states "NFFE Local 1437, last year founded a branch, the Picatinny Arsenal Professional Association (PAPA) to represent and negotiate specifically for professionals." Both flyers were signed by the President of NFFE, Local 1437 and the chairman of this association. The intent obviously was to create the impression that the voter would not be voting for a union but rather for an association for professionals.

This deception actually did not start during the campaign, it started when NFFE Local 1437 petitioned for this election. A review of their petition shows that each petition page states that the employees who signed were requesting an election on behalf of the Picatinny Arsenal Professional Association, affiliated with NFFE Local 1437. The employees who signed this petition and later voted for NFFE Local 1437 were led into the belief that they were supporting a professional association, not a union. At the time the petition was filed, AFGE Local 225 questioned the Labor Department Compliance Officer on the validity of the petition. AFGE was informed that the Regional Administrator had reviewed the petition and regarded it as valid. The name of the Picatinny Arsenal Professional Association appeared on every page of the petition but it was nowhere to be found on the LMSA 60 Petition form. This was an identical situation to that which existed during the campaign. NFFE's campaign material contained references to the Picatinny Arsenal Professional Association and its chairman, but nowhere was that name found on the ballot.

AFGE believes that this tactic distorted the decision before the voters. If NFFE campaigned and petitioned under the name of a professional association, that organization should be a chartered labor organization whose name appeared both on the petition and ballot. AFGE believes this use of the name of an association not chartered as a labor organization was improper. AFGE believes the use of that association's name on the campaign material and its use in the original petitioning process was not in accordance with the Assistant Secretary's rules for the conduct of elections and is grounds for setting aside the results of the election.

Yours truly,

G. Nancy McAleney

G. Nancy McAleney
President, AFGE Local 225

George Tilton, Associate General Counsel
National Federation of Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006

555

AUG 13 1975

Re: Massachusetts National Guard
Boston, Massachusetts
Case No. 31-9108(CA)

Dear Mr. Tilton:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (3) and (5) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted. In this connection, I find that the Complainant did not present sufficient evidence to establish a reasonable basis for the allegation that the Activity improperly assisted the National Association of Government Employees in soliciting signatures for organizational purposes. In this regard, see Section 203.6(a) of the Assistant Secretary's Regulations which provides that the Complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in its complaint.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

April 22, 1975

In reply refer to Case No. 31-9108(CA)

George Tilton, Associate General Counsel
National Federation of Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006

Re: Massachusetts Army National Guard

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as you have not submitted sufficient evidence to support the allegation that the Activity knowingly assisted the National Association of Government Employees in violation of the rights of the National Federation of Federal Employees, Local 1629's status as exclusive representative. The two signed statements which you submitted as evidence and your report of investigation offer no support to your allegations that the Activity knowingly assisted the NAGE in soliciting signatures or that it failed and refused to take any action when charges of possible improper conduct were brought to its attention by the NFFE.

Accordingly, as to the entire complaint, I find that you have not sustained your burden of proof as required by Section 203.5(c) of the Regulations of the Assistant Secretary. In this regard you are referred to Report on Ruling of the Assistant Secretary No. 24.

Additionally, it appears from statements of the parties that the NFFE failed to serve copies of the two signed statements which it submitted to the Boston Area Office as evidence in support of the allegations made in the complaint. The obligation of the Complainant to serve the Respondent Activity with its entire report of investigation is made clear in Sections 203.2(a)(4) and 203.3(b) and and 203.4(a) and (b) of the Regulations of the Assistant Secretary. Report on Ruling No. 24 also addresses this matter:

> "The further requirement under the Regulations that a report of investigation of such charge accompany the

complaint points up the fact that the charging party and the respondent are expected to have conducted an investigation of the alleged unfair labor practices, have exchanged all relevant evidence in support of their respective positions (emphasis added), and have attempted to resolve the matter informally."

Accordingly, I find further that the complaint should be dismissed for the failure of the Complainant to serve its entire report of investigation on the Respondent Activity.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business May 5, 1975.

Sincerely,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

CC: Paul McNaught, President
NFFE, Local 1629
50 Campbell Street
Woburn, Mass. 01801

Charles Hickey, Nat'l. Vice Pres.
National Assoc. of Govt. Employees
285 Dorchester Avenue
S. Boston, Mass. 02127

Col. Allan F. Bolton
Mass. Army National Guard
Technician Personnel Office
143 Speen Street
Natick, Mass. 01760

Mr. Richard L. Robertson
Chief Steward
International Brotherhood
of Electrical Workers, Local 574
Rt. 1 Box 486-C
Port Orchard, Washington 98366

556

AUG 13 1975

Re: Puget Sound Naval Shipyard
Bremerton, Washington
Case No. 71-3313(CA)

Dear Mr. Robertson:

This is in connection with your request for review seeking reversal of the Assistant Regional Director's finding that dismissal of the instant complaint is warranted as it is procedurally defective.

In agreement with the Assistant Regional Director, I find that because the Complainant did not file a pre-complaint charge in this matter, as required by Section 203.2(a) of the Assistant Secretary's Regulations, dismissal of the instant complaint is warranted. Accordingly, the merits of the subject case have not been considered and your request for review, seeking reversal of the Assistant Regional Director's decision dismissing the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

May 7, 1975

Mr. Richard L. Robertson
Route 1, Box 486-C
Port Orchard, Washington 98366

Re: Puget Sound Naval Shipyard -
Richard L. Robertson
Case No. 71-3313

Dear Mr. Robertson:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings on the complaint are warranted inasmuch as no precomplaint charge has been filed pursuant to Section 203.2(1) of the Regulations. The requirement of a precomplaint charge is designed not only to eliminate any element of surprise as noted in your letter of March 28, 1975, to the Assistant Secretary, but also to allow the parties to investigate the allegations and attempt an informal resolution as required by Section 203.2(4).

I am, therefore, dismissing the complaint on this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216, not later than the close of business on May 20, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director/LMSA

Mr. Richard L. Robertson
Chief Steward
IBEW, Local 574
Route 1, Box 486-C
Port Orchard, Washington 98366

AUG 22 1975

Re: Puget Sound Naval Shipyard
Bremerton, Washington
Case No. 71-3232(CA)

Dear Mr. Robertson:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the Section 19(a)(1), (2) and (4) allegations of the complaint in the above-named case.

In agreement with the Assistant Regional Director, I find that a reasonable basis has not been established for the 19(a)(4) allegation and, consequently, further proceedings on such allegation are unwarranted. However, with respect to the 19(a)(1) and (2) allegations, I find that a reasonable basis for that portion of the complaint exists inasmuch as, in my view, the evidence presented in connection with the Respondent's action in suspending Forest J. Cobb raises substantial questions of fact which can best be resolved on the basis of evidence adduced at a hearing.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is granted, in part, and the case is remanded to the Assistant Regional Director who is directed to reinstate that portion of the complaint alleging a violation of 19(a)(1) and (2) and, absent settlement, to issue a notice of hearing on such allegations.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

May 6, 1975

Mr. Richard L. Robertson
Chief Steward
IBEW, Local 574
Route 1, Box 486-C
Port Orchard, Washington 98366

Re: Puget Sound Naval Shipyard -
Bremerton Metal Trades Council
Case No. 71-3232

Dear Mr. Robertson:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as there is no evidence of disparate treatment of Mr. Cobb with regard to the disciplinary action he received for two instances of unauthorized absence from work nor is there evidence of union animus. In this regard, it is noted that Mr. Cobb served as a shop steward without recrimination. In addition, since a grievance does not constitute a "complaint" within the meaning of Section 19(a)(4) of the Order, no violation of this Section is indicated. It is concluded, therefore, that you have failed to meet the burden of proof placed upon the Complainant by Section 203.5(c) of the Assistant Secretary's Regulations.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations or the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business on May 19, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director/LMSA

558

Mr. Thomas F. O'Leary
President, American Federation of
Government Employees, Local 2433
P.O. Box 3037 Lennox Branch
Inglewood, California 90304

AUG 22 1975

Re: Defense Contract Administration
Services Region
Los Angeles, California
Case No. 72-4953(CA)

Dear Mr. O'Leary:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(2) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. Thus, in my view, the Complainant herein did not present sufficient evidence to establish a reasonable basis for its allegation that the Activity made unilateral changes in the Merit Promotion Program. Further, I find that there is insufficient evidence to support the Complainant's allegation that the Activity refused to honor agreements concerning the implementation of the Merit Promotion Program or that any delays by the Activity in implementing the Program were in bad faith. In this regard, see Section 203.6(e) of the Assistant Secretary's Regulations which provides that the Complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in its complaint.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

April 15, 1975

Mr. Charles M. Wells, President
AFGE Council of Locals
3141 La Travesia Drive
Fullerton, California 92635

Re: DCASR, Los Angeles -
AFGE Council of Locals
Case No. 72-4953

Dear Mr. Wells:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It is alleged Respondent violated Sections 19(a)(2) and (6) by refusing to honor agreements made concerning the implementation of a contractually bargained Merit Promotion Plan and by unilaterally altering working conditions.

The investigation revealed that Respondent failed to promptly notify Complainant of certain changes in the Federal Personnel Manual. In determining that there is not a reasonable basis to conclude that this act constitutes a rejection of the bargaining process or an attempt to bypass or undermine the bargaining representative, I note Respondent did not unilaterally implement any changed procedures and that the parties quickly reached agreement on a revised promotion procedure. Moreover, this single failure to impart information appears to have been an inadvertence.

Similarly, the delay by one supervisor to notify a lower level supervisor that an employee was to be granted time for Union business does not warrant issuance of a notice of hearing where the employee in question was, in fact, notified by Respondent of scheduled merit promotion panel meetings and was granted time to prepare for them.

The investigation also disclosed insufficient evidence of a unilateral change in the promotion plan since a joint labor-management task force had agreed to the change. Further, with respect to allegations concerning employee orientation and the use of a 1972 memorandum, the Assistant Secretary has made it clear that such matters are not grounds for an unfair labor practice, but instead should be resolved through the negotiated grievance procedure (See Report on Ruling No. 49).

Finally, no evidence was submitted by Complainant in support of its 19(a)(2) allegations.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business on April 28, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director/LMSA

Ms. Lisa Renee Strax
Legal Department
National Federation of Federal
Employees
1737 H Street, N.W.
Washington, D.C. 20006

559

AUG 22 1975

Re: United States Department of
Army, Headquarters
Army Materiel Command
Alexandria, Virginia
Case No. 22-5819

Dear Ms. Strax:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the instant complaint alleging violations of Section 19(a)(1) and (6) of the Executive Order, as amended.

Under all of the circumstances, I conclude, in agreement with the Acting Assistant Regional Director, that further proceedings in this matter are unwarranted. In reaching this determination, I find that the Complainant did not present sufficient evidence to establish a reasonable basis for its contention that the Activity changed its merit promotion policies subsequent to recognizing the Complainant as the exclusive representative of certain of its employees. Further, I find that the Complainant did not present sufficient evidence to establish a reasonable basis for its allegation that the Activity refused to meet and confer with the Complainant with regard to its merit promotion policies and procedures. See, in this regard, Section 203.6(e) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

April 14, 1975

Ms. Lisa Renee Strax
Staff Attorney
National Federation of Federal
Employees
1737 "H" Street, NW
Washington, D.C. 20006
(Cert. Mail No. 954683)

Re: U. S. Department of Army
Headquarters Army Materiel
Command
Case No. 22-5819(CA)

Dear Ms. Strax:

The above-captioned case alleging a violation of Section 19 of Executive Order, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You filed a charge with the Agency on January 2, 1975 which read, inter alia, as follows:

> "The basis of this charge is that, in violation of the directives of CPR 950-1, Subch. 2-6, promotions, transfers and other employee placements have been made at AMC without proper publication of the opportunity. Merely notifying the exclusive representatives of position vacancies does not fulfill the instructions of the above noted provision. Interested employees must be permitted to apply for these vacancies. For the past few years, 171 application forms have neither been accepted nor considered when filling a vacant position. The total and unqualified reliance which is now placed on the computer suggestions is not in compliance with 950-1, 2-6 or AMCM 690-1, Subsection 2."

In my view, the charge does not set forth facts or allegations which, even if true, are violations of Section 19(a)(1) and (6) of the Executive Order. Section 19(a)(1) relates to restrain, interference or coercion of employees in the exercise of rights set forth in the Order. The "rights" set forth in the Order in Section 1(a) refer to the right to engage in or refrain from engaging in activities in support of a labor organization. Section 19(a)(6) refers to consultation, confering or negotiating with a labor organization. There is nothing in the charge which is consonent with 19(a)(1) and (6). There is insufficient cause, therefore, to believe that a violation of the Executive Order has occurred.

A second basis for finding insufficient evidence to believe that a violation of the Executive Order has occurred is the failure of the Union to present in the charge of 1/2/75 or the complaint of 3/7/75 a clear and concise statement of the facts which allegedly constitute the unfair labor practice. No allegation has been made articulating the time and place of occurrence of the particular acts complained of. The charge and complaint, therefore, did not meet the requirements of Section 203.2(a)(3) and 203.3(a)(3) of the Rules and Regulations of the Assistant Secretary. 1/ Certification to your Union did not issue until September 30, 1974 and there is no evidence that the Activity has refused to negotiate an agreement; it is necessary, therefore, to know when certain alleged changes have occurred. If the gravamen of your charge and complaint is that there have been unilateral changes made in certain procedures without any discussion or input by your organization, it is critical to know the dates and circumstances of those changes. The pleadings you have filed do not contain the specifics called for in the Rules and Regulations.

In addition to the procedural deficiencies listed above, there are other reasons for refusing to issue a notice of hearing. Your complaint contained matters not previously listed in the pre-complaint charge. I am, therefore, barred from considering those matters which were not raised in the charge. The charge generally covered three main areas and I am limiting my consideration to those areas which are as follows:

1. Lack of publication of vacancy announcements;

2. Refusal to accept application form 171 for vacancies;

3. Use of unreliable computer suggestions in filling vacancies.

In support of one, above, the only evidence submitted by your organization is the general allegation on the face of the complaint that position vacancies at Headquarters, AMC, are repeatedly filled without prior notice or publication, that only selected employees receive personal notice, and that such was not in compliance with CPR 950-1, p. 2-6(a)(2). The Agency has responded to the allegation by asserting that certain positions are filled by Open Announcements which may be filed for at any time. You have submitted no evidence, therefore, to sustain the allegation that there is a lack of publication of vacancy announcements.

With respect to two, above, the refusal to accept application form 171's for vacancies, you charge that, "applications for job openings from in-house people are not being accepted. Outside personnel are being transferred to AMC at all grade levels." You cited in support of this allegation that a Ms. Saudia Sappington of Troscom, St. Louis was selected for a Clerk Stenographer GS-05 in the Products Operations Division of AMC and that there was "no general

1/ Assistant Secretary's Report No. 33.

announcement for that position and only five candidates were considered." Nothing further was offered to support the allegation that the Agency refuses to accept application form 171's for vacancies; and there was no evidence of any employee filing a 171 application for a position and having its acceptance denied. The Agency responded, in defense, that Ms. Sappington was selected from an open announcement procedure after the extended time period of consideration because there was an initial lack of applicants. I must conclude, therefore, there is no support for the allegation that the Activity refused to accept application forms 171.

The third allegation raised, above, averred the use of unreliable computer suggestions in filling vacancies. No example was furnished nor evidence submitted to support the allegation other than the statement, "the technique of computer sorting of personnel files for the purpose of compiling referral lists does not give fair and equitable consideration to all qualified." The Activity asserted, on the other hand, that employees are given the opportunity to review and update their own information in the computer bank and that these referrals are subject to screening panels. I find, therefore, no evidence to support the factual allegations in your third allegation.

In summary, therefore, I find insufficient cause to believe that a violation of the Executive Order has occurred because of:

1. The charge fails to set forth a violation of the Executive Order;

2. The charge and complaint did not conform to the Rules and Regulations of the Assistant Secretary;

3. There is a lack of evidence to support the factual allegations in the pleadings.

In these circumstances, therefore, I find no reasonable basis for the issuance of a notice of hearing.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business April 28, 1975.

Sincerely,

Frank P. Willette

Frank P. Willette
Acting Assistant Regional Director
for Labor-Management Services

cc: Mr. Philip Barbre, Chief, Headquarters
Civilian Personnel Office
Department of the Army
AMC Personnel Support Agency
5001 Eisenhower Avenue
Alexandria, Va. 22333
(Cert. Mail No. 954684)

Mr. William Mitchell, President
National Federation of Federal Employees,
Local 1332
6104 Edsall Road, Apt. 202
Alexandria, Va. 22304

General Miley, Commander
U. S. Department of Army
Headquarters, Army Materiel Command
5001 Eisenhower Avenue
Alexandria, Va. 22333

bcc: S. Jesse Reuben, Deputy Director/OFLMR

Dow E. Walker, AD/WAO
ATTN: Earl T. Hart, AAD

Mr. Ralph J. McElfresh, Jr., President
International Federation of Professional
and Technical Engineers, Local 1
P.O. Box 95, Bowers Hill Station
Chesapeake, Virginia 23321

AUG 22 1975

Re: Navy Regional Finance Center
Department of the Navy
Case No. 22-5749(CA)

Dear Mr. McElfresh:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the amended complaint in the above-named case.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted. Thus, in my view, as the Complainant herein is not the exclusive representative of any of the Respondent Activity's employees, the Respondent Activity was not required by the Order to meet and confer with the Complainant on the matters in dispute. In reaching this conclusion, it was noted that National Aeronautics and Space Administration (NASA), Washington, D.C., A/SLMR No. 457, was distinguishable from the instant situation in that here there is no evidence of any conduct by the Respondent which independently interfered with, restrained, or coerced employees of the Norfolk Naval Shipyard. Rather, in this case, the Section 19(a)(1) allegation clearly is derivative of the Section 19(a)(5) and (6) allegations, which previously were amended out of the instant complaint.

Accordingly, and noting particularly that the instant complaint was not filed against the Activity with which the Complainant has a collective bargaining relationship, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

March 26, 1975

Mr. Ralph J. McElfresh, Jr.
President
International Federation of
Professional & Technical Engineers,
AFL-CIO, Local #One
P. O. Box 95
Bowers Hill Station
Chesapeake, Va. 23321
(Cert. Mail No. 701416)

Re: Navy Regional Finance Center
Department of the Navy
Case No. 22-5749(CA)

Dear Mr. McElfresh, Jr.:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your charge alleges that the Activity has violated Sections 19(a)(2), (5) and (6) of the Executive Order because it has refused to discuss matters involving official travel, it has made changes in procedures and practices and has discouraged membership in your organization by making it appear that your organization was ineffective in representing employees.

Your organization is the exclusive representative for a unit of employees employed by the Norfolk Naval Shipyard. The Respondent is a sister activity of the Norfolk Naval Shipyard and services the latter installation. Employees of Respondent are represented by a labor organization different from yours. There is no evidence and you do not claim to represent any of Respondent's employees. One of the services provided by the Respondent for the Norfolk Naval Shipyard is the processing of travel vouchers. Apparently, there had been an arrangement, whereby, if employees in your unit had any questions and problems with travel vouchers they would ask you or other representatives of your organization to communicate with Respondent for their resolution. The factual situation which prompted the charge occurred when two employees were asked by Respondent to justify travel time while on official business in Italy. You were asked by employees in the unit you represent to investigate the problems and communicate with Respondent. You allegedly were told by representatives of Respondent that the employees involved would have to communicate directly with travel clerks employed by Respondent to resolve any voucher disputes, which would have been a change with past practice.

cc: S. Jesse Reuben, Deputy Dir./OFLMR
Dow E. Walker, AD/Wash; Attn: Earl T. Hart, AAD
John Gribbin, Labor Rel. Off.

It is clear that the Navy Regional Finance Center is not a party to a bargaining relationship with your organization and, therefore, there is no basis to find a violation of Section 19(a)(5) and (6). Moreover, there are no facts to support an allegation of a 19(a)(2) violation since you supplied no evidence to indicate discrimination in regard to hiring, tenure, promotion, or other conditions of employment which would demonstrate discouragement of union membership. In addition, nothing was alleged or unearthed to show an agency's obligation to assure that the rights of employees of a subordinate activity are protected. 1/

The facts in the instant case show a co-equal relationship between sister agencies; each of which is under contract with different labor organizations. I find no duty or obligation for Respondent to discuss with the Complainant the manner and means it would use to administer the processing of travel vouchers and the problems incident thereto and, therefore, no reasonable basis for the issuance of a notice of hearing has been shown.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business April 8, 1975.

Sincerely,

Kenneth L. Evans

Kenneth L. Evans
Assistant Regional Director
for Labor-Management Services

cc: Mr. James C. Causey
Labor Relations Advisor
Labor Disputes & Appeals Section
Department of the Navy
Office of Civilian Manpower Management
Washington, D.C. 20390
(Cert. Mail No. 701417)

Captain Walter Grechanik
Commanding Officer
U. S. Navy, Navy Regional
Finance Center
Naval Air Station, Building 132
Norfolk, Va. 23511

Mr. Ernest L. Morris
U. S. Navy, Navy Regional
Finance Center
Norfolk, Va. 23511

1/ Compare National Aeronautics and Space Administration (NASA), A/SLMR No. 457.

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1737 H Street, N.W.
Washington, D.C. 20006

561

AUG 25 1975

Re: Treasury Disbursing Center
Austin, Texas
Case No. 63-5395(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. In reaching this conclusion, it was noted particularly that insufficient evidence was presented to establish a reasonable basis for the allegation that meeting rooms were not made available by the Activity on the basis of discriminatory considerations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

May 22, 1975

In reply refer to: 63-5395(CA)
Treasury-Disbursing Center, Austin
Texas/NFFE, LU 1745

Ms. Janet Cooper, Staff Attorney
National Federation of Federal Employees, Ind.
1737 H Street, N. W.
Washington, D. C. 20006

Certified Mail #212523

Dear Ms. Cooper:

The above-captioned case alleging violations of Section 19(a) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant. In this regard you were afforded the opportunity, subsequent to receipt of Respondent's response to the complaint, to submit additional evidence in support of the allegations, but to this date none has been received.

Therefore, I find that your allegation that the granting of agency facilities by management in EEO complaint cases in the past has been limited to EEO complainants with non-union representation lacks supporting evidence such as places, dates, names of representatives previously granted the use of agency facilities, what facilities were granted for their use, or if there have been any other such denials. In fact, it appears from Respondent's statements that a duly recognized union officer had previously been granted the use of agency facilities to meet with Louise Ando, the same EEO complainant with whom you wished to confer.

Also, established Departmental EEO procedures apparently require written notification to the Activity of the authorized EEO complainant's representative(s), and no evidence was submitted to indicate that you or the other persons involved in the November 8, 1974, meeting wherein use of a room to meet with the complainant was, admittedly, denied to you, had such authorization.

Further, there has been no evidence submitted to contradict the agency's contention that your request was denied due to lack of a workable time frame within which your request could be properly considered.

In the absence of evidence of any disparity in the treatment of a timely request for the use of Activity facilities by a duly authorized EEO complainant's representative, either union or non-union, I find no basis establishing anti-union animus as the Respondent's motivation for its denial of your request, and consequently no basis for the alleged violation of Section 19(a)(1) or (2) of the Order in Respondent's actions.

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, Washington, D. C. 20216, not later than close of business June 6, 1975.

Sincerely,

Cullen P. Keough
Assistant Regional Director
for Labor-Management Services

cc: Ms. Delma Thames, President
National Federation of Federal Employees
Local Union 1745
1615 East Woodward Street
Austin, Texas 78742

Certified Mail #212524

Mr. George Clark, Director
Treasury-Disbursing Center
1619 East Woodward Street
Austin, Texas 78742

Certified Mail #212525

Mr. Oscar E. Masters, Area Director
U. S. Department of Labor
Labor-Management Services Administration
555 Griffin Square Building, Room 501
Griffin & Young Streets
Dallas, Texas 75202

Mr. Paul Area, Acting Director
Labor Relations and Equal
Opportunity Staff
Bureau of Field Operations
Social Security Administration
Room 211, West High Rise
6401 Security Boulevard
Baltimore, Maryland 21235

562

AUG 25 1975

Re: Department of Health, Education and Welfare
Social Security Administration
Bureau of Field Operations
Case No. 40-6113(AC)

Dear Mr. Area:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your petition for Amendment of Certification (AC).

In agreement with the Assistant Regional Director, and based on his reasoning, I find the instant petition is inappropriate inasmuch as the evidence establishes that the name of the agency or activity contained on the current Certification of Representative has not changed.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your AC petition, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Department of Health, Education and Welfare
Social Security Administration
Bureau of Field Operations

PETITIONER

and

Case No. 40-6113(AC)

National Federation of Federal Employees,
Local 1685

LABOR ORGANIZATION

REPORT AND FINDINGS
ON
PETITION FOR AMENDMENT OF CERTIFICATION

Upon a petition for amendment of certification filed in accordance with Section 202.2(c) of the Regulations of the Assistant Secretary, the undersigned, after posting of notice of petition, has completed his investigation and finds as follows:

A certification of representative was issued on July 8, 1971, Case No. 40-2899(NO), certifying the labor organization, National Federation of Federal Employees, Local 1685, as the exclusive representative of employees in the following unit:

> All General Schedule employees of the Atlanta (Downtown) District, East Point District, Marietta District, and Decatur District, excluding all management officials, professionals, employees engaged in Federal personnel work in other than a purely clerical capacity, and guards and supervisors, as defined in Executive Order 11491.

The Petitioner proposes to amend the certification to reflect that the area director of the Activity is the proper collective bargaining official in lieu of the regional representative, which change resulted from a nationwide management reorganization. No objection has been raised to the proposed amendment by the labor organization or by any individual or party.

The organizational structure of the Social Security Administration at the time of certification provided that the District Offices throughout the eight-state Atlanta Region be supervised by assistant regional representatives, who in turn report to the Regional Representative of the Bureau of District Operations. Thus, the four district offices in the Atlanta Metropolitan area which comprise the bargaining unit reported to an assistant regional representative for the State of Georgia, who was an extension of, and acted on behalf of the regional representative.

The assistant regional representative's authority to make final decisions on significant personnel and operational matters was limited. He had little policy-making authority, but supervised implementation of higher level policies. He dealt with the exclusive representative on labor relations matters only as the regional representative's designee.

Pursuant to a nationwide management reorganization within the Social Security Administration, effective April 26, 1974, area director positions were established, replacing the assistant regional representative. The area director concept provides an intervening management authority between the districts and the regional representative. The area director position, with authority over the district offices in Georgia, was staffed September 9, 1974.

According to Petitioner, the area director has been given discretion on matters of concern to unit employees which were formerly under the authority of the regional representative. The area director may make formal decisions on employee grievances. He has authority to approve overtime, high quality increases, special achievement awards, training within prescribed limits, outside work and space rental. Additionally, the area director has been delegated authority over matters which are not directly related to personnel policy, nor have a direct relationship to working conditions. It contends that dealings at the area director level would promote effective dealings and contribute to the efficiency of Agency operations.

The labor organization has no objection to the change sought by Petitioner. In fact, it contends it has been dealing with the area director as he is more accessible than the regional representative.

A petition for amendment of certification is the proper vehicle when parties seek to conform the recognition involved to existing circumstances resulting from such nominal or technical changes as a change in the name of the exclusive representative or a change in the name or location of the Agency or Activity.[1/] Petitioner is not seeking to change the name of the Agency or Activity, nor does it contend that the certified unit is an inappropriate unit as a result of the management reorganization. It appears that Petitioner is of the opinion that granting of recognition to the labor organization and certification of the exclusive representative encompasses recognition or designation of management's collective bargaining official. Thus, it requests that the certification be amended to recognize the area director as the proper collective bargaining official in lieu of the regional representative to reflect existing circumstances brought about by the change in the management organizational structure.

When a labor organization is accorded exclusive recognition, the Area Director certifies the status of the exclusive representative by issuing a Certification of Representative. The procedure and the Certification designate the name of the Activity and the name of the labor organization certified. It does not designate the individual or individuals who will act on behalf of the parties to the bargaining relationship, nor does it establish the level at which bargaining or negotiations will take place. Who will act on behalf of the parties is a matter left to the Activity and the exclusive representative. Consequently, the issue presented by the petition is not on a matter which may be resolved through the filing of an AC petition. Inasmuch as the name of the agency or activity has not changed, I find that there is no issue to be resolved through the filing of a petition for amendment of certification. Accordingly, the petition should be dismissed.

Having found that the petition is inappropriate in this case, the parties are hereby advised that, absent the timely filing of a request for review of the Report and Findings, the undersigned intends to issue a letter dismissing the petition.

Pursuant to Section 202.4(i) of the Regulations of the Assistant Secretary, a party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216.

1/ See Headquarters, U. S. Army Aviation Systems Command, A/SLMR No. 160.

A copy of the request for review must be served on the undersigned Assistant Regional Director, as well as the other party. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 4, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Relations

Atlanta Area

Dated: May 20, 1975

(3)

Herbert Collender, President
Local 1760
American Federation of Government
Employees, AFL-CIO
P.O. Box 626
Corona-Elmhurst, New York 11373

AUG 25 1975

Re: Social Security Administration
Northeast Program Center
Case No. 30-5974(CA)

Dear Mr. Collender:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-captioned case.

In agreement with the Acting Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted inasmuch as a reasonable basis for the complaint has not been established. Regarding the allegation that the Activity had retaliated against the Complainant in an attempt to restrain it in its representative role, it was noted that no evidence was presented to support such allegation, which was raised for the first time in the complaint and was not first the subject of a pre-complaint charge, as required by Section 203.2(a)(1) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

April 4, 1975 In reply refer to Case No. 30-5974 (CA)

Herbert Collender, President
Local 1760
American Federation of Government
Employees, AFL-CIO
PO Box 626
Corona-Elmhurst, New York 11373

Re: Social Security Administration
Northeast Program Center

Dear Mr. Collender:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The Complainant states in its complaint that as a result of what it considered management's mishandling of a bomb threat, it released a special handbill on October 30, 1974 criticizing the actions of Mr. Pasquale F. Caliguiri, the Regional Representative. On the following day Mr. Caliguiri sent a letter to you, the President of the Complainant, in which he objected to the publishing of the handbill and criticized its contents. This letter was followed on November 1, 1974 by a note from Mr. Caliguiri to you in which he took further exception to the union's publishing of the handbill and asked for an apology.

On December 31, 1974, the Complainant filed its complaint alleging violations of Sections 19(a)(1) and 19(a)(3) in that the letters written by Caliguiri on October 31, 1974 and November 1, 1974 constituted attempts to control and inhibit the union in its internal operation, and thereby interfered with the rights assured to all employees under the Executive Order.

By letter dated January 9, 1975, the Respondent contended in its answer to the complaint that the correspondence between Caliguiri and you, as President of the Complainant, was confidential and therefore privileged communication between the parties, and as such cannot be considered to be a violation of the Executive Order.

In my view, the principal issue in this case is whether the contents of the letters written by Mr. Caliguiri were of such a nature as to effectively interfere with the right assured to employees by Section 1(a) of the Order to form, join and assist a labor organization, including the right to participate in the management of such an organization. In a previous decision, the Assistant Secretary found in circumstances similar to those presented in the instant case, that there was no basis for the finding of a violation of Section 19(a)(1).1/ In that case, the Activity's Commanding Officer addressed a letter to the President of the Complainant union criticizing the conduct of the union representative at a grievance meeting. No violation was found, however, because the letter had been sent directly to the union President, had not been publicized in any manner, and did not contain any threat of penalty or reprisal against the union President. Therefore, the letter was found not to have interfered with the individual's right to act as a representative of the union.

In the instant case, I find that the letters addressed to you by Mr. Caliguiri were of essentially the same nature as the one involved in the above-cited case. The letters sent to you by Mr. Caliguiri were personal expressions of opinion, and while they may have been personally offensive to you, I find no basis for concluding that such expressions of opinion in and of themselves constitute interference with any Section 1(a) rights. Nor can I conclude that the sending of the letters interfered with those assured rights. Further, the letters contain no explicit or implicit threats of penalty or reprisal which could be construed to be attempts to impede your activity as a representative of the Complainant, and no statements were made in the letters which would constitute interference, restraint, or coercion with regard to any employee's rights assured by Section 1(a) of the Order.

1/ United States Army, School/Training Center, Fort McClellan, Alabama. A/SLMR No. 42.

Herbert Collender, President
LU 1760, AFGE, AFL-CIO

Case No. 30-5974 (CA)

Finally, I note that the letters in question were sent directly to you, and there is no indication in either letter that Mr. Caliguiri intended the contents of the letters to be made public.

Under all the circumstances, I must conclude that the finding of a reasonable basis for a violation of Section 19(a)(1) is not warranted.

With regard to the alleged violation of Section 19(a)(3), your complaint consists of an assertion that the letters sent by Mr. Caliguiri constituted attempts to control the union and inhibit its internal operation. I find, however, that no evidence has been submitted which would tend to support the finding that such an act by a representative of management constitutes control of a labor organization within the meaning of Section 19(a)(3). Therefore, it does not appear that you have sustained the burden of proof placed upon every complainant under the Assistant Secretary's Rules and Regulations.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business April 17, 1975.

Sincerely,

MANUEL EBER
Acting Assistant Regional Director
New York Region

Mr. Rocco Stellatano
President
Local #2639, AFGE, AFPRO
4300 Boudinot Avenue
Cincinnati, Ohio 45211

8/25/75

Re: Department of the Air Force,
Air Force Plant Representative Office (AFPRO),
Air Force Contract Management Division,
Cincinnati, Ohio
Case No. 53-7667(CA)

Dear Mr. Stellatano:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(3) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Assistant Regional Director, I find that a reasonable basis for the instant complaint was not established. Thus, as the Complainant did not hold exclusive recognition for any of the Respondent's employees, I find that the Respondent was not required to meet and confer with the Complainant concerning the matters in dispute.

Accordingly, and noting that it is undisputed that the employee who distributed the union literature in this matter did so while on his lunch hour, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE AIR FORCE,
AIR FORCE PLANT REPRESENTATIVE OFFICE (AFPRO),
AIR FORCE CONTRACT MANAGEMENT DIVISION,
CINCINNATI, OHIO,

Respondent

and

LOCAL 2639, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO,

Complainant

The Complaint in the above-captioned case was filed on October 29, 1974, in the office of the Cleveland Area Director. It alleges violations of Sections 19(a)(3) and (6) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall, therefore, dismiss the Complaint in this case.

The Complainant alleges that the Activity permitted a representative of the incumbent exclusive representative (Local 75, National Federation of Federal Employees) to distribute membership literature among unit employees on September 5, 1974, during work hours, and denied the Complainant the right to consult and confer on the charge. NFFE Local 75 has been the exclusive representative of all non-professional employees of the Activity since February 17, 1967, and had a contract in force and effect at the time of the instant complaint. The Complainant concedes that NFFE Local 75 is the incumbent exclusive representative, and that the Complainant did not request permission to distribute literature.

I find that the Complaint must be dismissed. By date of September 5, 1974, the Complainant (by its President) wrote to the Activity stating that he was "grieving" and requesting "a hearing why N.F.F.E. Local #75 ignored Executive Order 11491, Section 20", as spelled out in their agreement, by allowing one of its representatives to pass out certain literature to unit employees, allegedly during his duty hours. Investigation discloses that Local 75, NFFE has been the exclusive representative of certain unit employees of the Activity, and at the time of the actions complained of had a contract with the Activity covering those employees. The Activity responded, saying that the representative of

Local 75 in question, a unit employee, did pass out certain literature, but that he did so while on his lunch hour, and thus did not violate the parties' agreement.

The Complaint alleges that the Respondent violated Section 19(a)(3) of the Order by assisting NFFE "to distribute literature for the purpose of soliciting membership during work hours" and Section 19(a)(6) by denying consultation on the unfair labor practice". Nowhere in the Charge was it alleged that the Activity violated the Order. Nor did the Activity address itself to such an issue. A "grievance and hearing" were requested on the issue of why NFFE had allegedly violated its contract. I find that the Charge did not specifically allege that the Respondent violated the Executive Order, and did not satisfy the requirements of the Assistant Secretary's Regulations, Section 203.2. Thus, the Complaint seeks to raise allegations not contained in any pre-complaint charge, and should not be considered by me.

However, assuming arguendo that the Complaint is properly before me, I would also dismiss the Complaint on its merits. The record shows, and the Complainant admits, that Local 75 was the incumbent exclusive representative at the time of the incidents involved, and admits that neither he nor the union he represented made any request to also pass out literature. The contract provision which the Complainant seems to feel was violated is simply an incorporation of the words of Section 20 of the Executive Order, which states that internal union business shall be conducted during non-duty hours. The Respondent stated that the incident in question took place on non-work time, a fact not disputed by the Complainant. Further, as the union of which the Complainant is a representative does not hold exclusive representational rights for the unit in question, it was not entitled to consultation or to equivalent status (even if it had asked for rights to distribute literature). See Federal Aviation Administration, Eastern Region, Boston ARTCC, Nashua, New Hampshire, A/SLMR No. 273, and Department of the Army, U. S. Army Natick Laboratories, Natick, Massachusetts, A/SLMR No. 263.

Having carefully considered all the facts and circumstances in this case, I conclude that the Complaint must be dismissed on the grounds that it was not preceded by a pre-complaint charge that satisfied the Assistant Secretary's Regulations, and, in the alternative, on the merits of the Complaint. The Complaint is hereby dismissed in its entirety.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a Request for Review with the Assistant Secretary for Labor-Management Relations, United States Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216. A copy of the Request for Review must be served on the undersigned as well as the Activity. A statement of such service should accompany the Request for Review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business May 26, 1975.

Dated at Chicago, Illinois, this 12th day of May, 1975.

Stephen F. Jeroutek
Acting Assistant Regional Director
United States Department of Labor
Labor Management Services Administration
230 South Dearborn Street, Room 1033B
Chicago, Illinois 60604

Attachment: LMSA 1139

Mr. Tom Gosselin
National Field Representative
National Treasury Employees Union
Suite 1101-1730 K Street, N.W.
Washington, D. C. 20006

8-25-75

Re: U.S. Civil Service Commission
Philadelphia Regional Office
Case No. 20-4849(CA)

Dear Mr. Gosselin:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the instant case alleging violations of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established. In reaching this conclusion, it was noted particularly that no collective bargaining relationship exists between the Respondent Civil Service Commission (CSC) and the National Treasury Employees Union (NTEU) for employees of the Internal Revenue Service, and that the CSC was performing a statutory role in conducting the audits in issue. Under these circumstances, I find that the CSC does not meet the definition of "Agency management" set forth in Section 2(f) of the Order. Accord, Department of the Navy, A/SLMR No. 529.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
PHONE 215-597-1134

April 14, 1975

Mr. Vincent L. Connery
National President
National Treasury Employees Union,
Chapter 071, National Treasury Employees Union
1730 "K" Street, NW, Suite 1101
Washington, D.C. 20006
(Cert. Mail No. 954681)

Re: U. S. Civil Service Commission
Philadelphia Regional Office
Case No. 20-4849(CA)

Dear Mr. Connery:

The above-captioned case alleging a violation of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended, has been investigated and carefully considered. It does not appear further proceedings are warranted.

Basically, your December 27, 1974 complaint alleges that Respondent violated the Executive Order when on July 24, 1974, its representative refused to allow NTEU representation during a scheduled desk audit as requested by the affected employees; and when on August 27, 1974, Respondent advised NTEU that should the appellants insist on retaining their NTEU representative when a CSC returned to attempt to conduct the audits, Respondent might have no choice but to cancel the Classification Appeal.

As you concede, the affected employees are employed by the IRS and the CSC was acting in its statutory role (5 U.S.C. 5112(b)). You argue that its only real basis for refusing union presence during the conduct of the desk audits was the Commissions' own rules; that had the IRS been conducting the appeals process you could have expected to be present (based on your 10(e) rights and terms of the negotiated agreement); and, finally, the statute offers no interdiction to union presence and the affected employees were denied their Section 1(a) rights.

In the first instance, the affected employees are not employees of the CSC, therefore, CSC could not grant appropriate "recognition" to a represen- of those IRS employees under Section 19(a)(5). As exclusive recognition is a

prerequisite to an obligation to consult, confer and negotiate, CSC could not have violated Section 19(a)(6) in this instance. I find no violation of Sections 19(a)(1) and (5).

Since CSC was acting in its statutory role as an appellate forum and since, in this instance, it does not meet the definition of "agency management" as contained in the Order, I find no basis for your argument that CSC was functioning as surrogate management. Consequently, CSC had no obligation to adhere to IRS's contractual obligations which arose out of Section 10(e) wherein the Union's rights are also predicted upon exclusive recognition.

With respect to the employees' rights assured by the Order, Section 1(a) does not establish a right to union representation at a desk audit. Section 7(d)(1), of course, provides for representation during an appeals process. Although NTEU was not permitted to be present during the desk audit, it was advised on August 27, 1974 that there is a CSC provision for obtaining relevant data from the exclusive representative of appellants. The file does not disclose, nor do you allege, that you attempted to offer such data and were refused the opportunity to do so. In this case, it is clear that the NTEU was, indeed, the chosen representative of the appellants and that the Union acted in that capacity with respect to the appeal but I find no violation of Section 19(a)(1) in the refusal to permit union representation at the desk audit.

Regarding your allegation that the CSC's threat to cancel the appeal was discriminatory, you have presented no evidence to show that the CSC acted in an invidious manner or that the appellants received disparate treatment. On the contrary, by denying the request to have a union representative present during the desk audit, the CSC was treating the requesting individuals in exactly the same manner as all other parties to a desk audit.

Finally, with respect to all issues raised, you have not produced evidence to show how the Commission's conduct could have or might have discouraged membership in the Union. Therefore, I find no violation of Section 19(a)(2).

Accordingly, for the reasons stated above and on the grounds that you have failed to establish a reasonable basis for the complaint which would warrant a hearing on either the 19(a)(1), (2), (5) or (6) allegations, I am dismissing your complaint in its entirety.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business April 28, 1975.

Sincerely,

Joseph A. Senge
Acting Assistant Regional Director
for Labor-Management Services

cc: Mr. Anthony F. Ingrassia
Director
U. S. Civil Service Commission
Office of Labor-Management Relations
1900 "E" Street, NW
Washington, D.C. 20415
(Cert. Mail No. 954682)

Mr. Tom Gosselin
National Field Representative
National Treasury Employees Union
1730 "K" Street, NW, Suite 1101
Washington, D.C. 20006

bcc: **Robert N. Merchant, AD/PHIAO**

S. Jesse Reuben, Deputy Director/OFLMR

Ms. Lisa Strax
Staff Attorney
National Federation of
Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006

8-28-75

Re: U.S. Department of Agriculture
Washington, D.C.
Case No. 22-5821(CA)

Dear Ms. Strax:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's partial dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (4), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis has not been established for the Section 19(a)(4) and (6) allegations and, consequently, further proceedings on such allegations are unwarranted. However, with respect to the 19(a)(5) allegation, I find that a reasonable basis for that portion of the complaint exists inasmuch as, in my view, the Respondent's decision to apply Section 3(b)(4) of the Order to the employees in issue raises substantial questions of policy under the Federal Labor Relations Council's decision in Audit Division (Code DU) National Aeronautics and Space Agency, FLRC No. 70A-7, which can best be resolved on the basis of evidence adduced at a hearing.

Accordingly, your request for review is granted, in part, and the case is remanded to the Assistant Regional Director who is directed to reinstate that portion of the complaint alleging a violation of 19(a)(5) and, absent settlement, to issue a notice of hearing on such allegation.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

May 5, 1975

Ms. Lisa Renee Strax
Staff Attorney
National Federation of Federal Employees
1737 "H" Street, NW
Washington, D.C. 20006
(Cert. Mail No. 701460)

Re: Department of Agriculture
Case No. 22-5821(CA)

Dear Ms. Strax:

The above-captioned case alleging violations of Section 19(a)(1), (4), (5) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted on the alleged violations of Sections 19(a)(4), (5) and (6).

You alleged, in essence, that the decision by the Agency to exempt the Auditors and Investigators violated 19(a)(1), (4), (5) and (6). A finding was made and a Notice of Hearing issued based upon the conclusion that there was a reasonable cause to believe that a violation of 19(a)(1) had occurred. I am of the opinion that the facts do not indicate that there is such reasonable cause with respect to alleged violations of 19(a)(4), (5) and (6).

I am, therefore, dismissing the 19(a)(4), (5) and (6) allegations in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business May 19, 1975.

Sincerely,

Kenneth L. Evans

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

cc: Dennis Becker
Office of General Counsel
U. S. Department of Agriculture
Washington, D.C. 20250
(Cert. Mail No. 701461)

The Honorable Earl L. Butz
Secretary of Agriculture
U. S. Department of Agriculture
Washington, D.C. 20250

Mr. Neal W. Renken, President
National Federation of Federal Employees,
Local 1375
228 Walnut Street
Federal Building, Room 862
Harrisburg, Pa. 17108

S. Jesse Reuben, Deputy Dir./OFLMR
Dow E. Walker, AD/WAO

Mr. Harold G. Schultz
1021 Markham Street
Vicksburg, Mississippi 39180

AUG 28 1975

Re: Vicksburg District
Corps of Engineers
Vicksburg, Mississippi
Case No. 41-4077(CA)

Dear Mr. Schultz:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that a reasonable basis for the complaint has not been established. In this regard, it was noted that there was insufficient evidence to support a reasonable basis for the allegation that the Activity's performance evaluation in this matter was based on discriminatory considerations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300
ATLANTA, GEORGIA 30309

May 27, 1975

Mr. Harold G. Schultz
1021 Markham Street
Vicksburg, Mississippi 39180

American Federation of
Government Employees
Local 3310
3621 Halls Ferry Road
Vicksburg, Mississippi 39180

In reply refer to: Vicksburg District
Corps of Engineers
Vicksburg, Mississippi
Case No. 41-4077(CA)

Gentlemen:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted.

Investigation of the complaint discloses that the alleged union activity, for which acts of reprisal were taken against H. G. Schultz, consisted of filing two grievances under the agency grievance procedure. One was filed February 14, 1974; decision rendered August 27, 1974, and the other was filed on April 26, 1974; decision rendered November 1, 1974.

As the agency grievance procedure is a procedure established by the agency itself, rather than through the process of bilateral negotiations, the processing or filing of grievances under such a procedure is not resulted from any rights under the Order, thus does not constitute union activity encompassed by Section 1(a) of the Order. Such a procedure is applicable to all employees of an agency whether or not there is a negotiated grievance procedure and regardless of whether or not they are included in an exclusively recognized bargaining unit. You were represented by a National Representative of AFGE at the grievance proceedings. He represented you as your personal representative. Your designation of him does not constitute union activity.

Inasmuch as the designation of your representative under the agency grievance procedure does not create any rights protected by the Order, it is unnecessary to determine if the appraisal given to you on August 29, 1974, for Contract Specialist, GS-9, constitutes a reprisal.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, Washington, D. C. 20216, not later than close of business June 11, 1975.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

cc: Colonel Gerald E. Galloway, District Engineer
Vicksburg District, Corps of Engineers
Post Office Box 60
Vicksburg, Mississippi 39180

Mr. R. H. Gaines, Jr.
Recording Secretary
Federal Employees Metal Trades
Council of Charleston
316 Cesana Avenue
Charleston, South Carolina 29407

Re: Charleston Naval Shipyard
Charleston, South Carolina
Case No. 40-5988(CA)

Dear Mr. Gaines:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the Section 19(a)(1) and (6) allegations of the complaint in the above-captioned case.

Under all of the circumstances, I find that a reasonable basis for the instant complaint has been established. See Department of the Army, Aberdeen Proving Ground, A/SLMR No. 518. Accordingly, your request for review is granted and the case is remanded to the Assistant Regional Director who is directed to reinstate the complaint and, absent settlement, to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

March 27, 1975

Mr. R. H. Gaines, Jr., Recording Secretary
Federal Employees Metal Trades Council of Charleston
316 Cessna Avenue
Charleston, South Carolina 29407

In reply refer to: Charleston Naval Shipyard
Charleston, South Carolina
Case No. 40-5968(CA)

Dear Sir:

The above-captioned case alleging violations of Sections 19(a)(1) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted. Investigation discloses that the May 16, 1974, Decision of Arbitrator Richard P. Calhoon provided, in part, that Respondent pay premium pay to certain employees. Respondent failed to timely petition the Council for review of Arbitrator Calhoon's arbitration award. Respondent's request to the Council for special leave for an extension of time was denied. In that request Respondent expressed its intention to request review only of that portion of the remedy which it believed violates the back pay statute. Respondent informed the Council that it intended to comply with the substantive portions of the award.

It was not until after the Council denied Respondent's request for a waiver of time limits that Respondent requested from the Comptroller General its opinion and advice as to whether Respondent was authorized to comply with the premium pay remedy of the arbitrator's award.

The Decision of the Comptroller General, dated August 28, 1974, relying on Civil Service Commission regulation, 5 C.F.R. 550.803 and a pertinent portion of the United States Code, denied Respondent the authority to pay the premium pay as required by the arbitrator's award.

Respondent's failure to timely petition the Council for review of Arbitrator Calhoon's award does not, in my view, preclude Respondent from soliciting an opinion from the Comptroller General as to the legality of the premium pay portion of the award. Respondent did not seek to ignore the substantive provisions of the award; it did not engage in a dilatory course of conduct. Instead, Respondent promptly requested the Council to waive its timeliness rules. Not until the Council rejected the request did Respondent seek the opinion from the Comptroller General.

The Comptroller General's opinion is clear and unequivocal; Respondent's failure to comply fully with the award, therefore, is not based on an attempt to deliberately avoid the arbitrator's award or the collective bargaining process.

I am, therefore, dismissing the complaint in this matter.

In my decision I have considered Respondent's contention that the 19(a)(6) issue in the complaint was not raised in the precomplaint charge as required by Section 203.2 of the regulations of the Assistant Secretary. Although the charge did not specify a 19(a)(6) violation, I do not deem that such omission constitutes a fatal defect. Respondent was aware of the basis of the charge and the complaint, and was put on notice as to the nature of the allegation. The complaint is not deemed to be defective. My dismissal, therefore, is not based on any procedural defect.

Pursuant to Section 203.7(e) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business April 9, 1975.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

Mr. Ralph J. McElfresh, Jr., President
International Federation of Professional and
Technical Engineers, AFL-CIO, Local No. 1
P.O. Box 95
Bowers Hill Station
Chesapeake, Virginia 23321

AUG 28 1975

Re: U.S. Department of the Navy
Norfolk Naval Shipyard
Portsmouth, Virginia
Case No. 22-5765(CA)

Dear Mr. McElfresh:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Acting Assistant Regional Director that further proceedings in this matter are unwarranted in that a reasonable basis for the complaint has not been established. Thus, in my view, the Respondent's conduct did not constitute a clear and unequivocal waiver of its right to negotiate on matters other than those contained in its July 17, 1973, letter. Moreover, the evidence reveals that the parties entered into a Memorandum of Understanding extending their negotiated agreement to December 31, 1973, that no new agreement was executed by the parties prior to that date, and that, thereafter, the Complainant has refused to negotiate a new agreement and, in this regard, has not responded affirmatively to any of the Respondent's bargaining proposals.

Accordingly, and noting particularly the Respondent's good faith efforts to negotiate a new agreement, your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

April 4, 1975

Mr. Ralph J. McElfresh, Jr.
President
International Federation of Professional
and Technical Engineers, Local No. 1
P. O. Box 95
Bowers Hill Station
Chesapeake, Va. 23321
(Cert. Mail No. 954673)

Re: Department of the Navy
Norfolk Naval Shipyard
Case No. 22-5765(CA)

Dear Mr. McElfresh:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your complaint alleges violations of Sections 19(a)(1), (2), (5) and (6) on the basis that Respondent unilaterally instituted a new grievance procedure by substituting the Shipyard's administrative grievance procedure for that contained in the collective bargaining agreement between the parties.

The investigation revealed that since 1963 the parties have had a collective bargaining relationship for approximately 1,000 employees in a unit of professional and non-professional technical employees. The most recent contract between the parties was effective from September 21, 1971 to September 20, 1973. By letter dated June 28, 1973, you requested an extension of the contract for an additional two years. By letter dated July 17, 1973, Respondent advised you it would not agree to so extend the agreement. In its response, Respondent said:

> "However, Executive Order 11491, as amended, Section 13.(e) prohibits extensions which do not conform to that section concerning the negotiated grievance procedure. Moreover, Department of Defense Directive 1426.1 of 9 December 1971, paragraph VII.D.2.h. requires that '...each agreement must be brought into conformance with existing published policies and regulations of the DOD component and of the DOD; regulations of the appropriate authorities...; and applicable laws at the time it is renegotiated, revewed or extended.' Therefore, some negotiation will be necessary."

On July 19, 1973, you met with Respondent and requested that the current agreement be simply brought up to date in terms of law and regulations but Respondent asserted it was not bound to follow such a course of action and that it would forward to the Union a set of proposals and ground rules for the forthcoming negotiations. Thereafter, on September 17, 1973, the parties entered into an agreement extending the contract only to December 31, 1973. The Memorandum reads:

> "It is agreed and understood between the parties that the provisions of the negotiated agreement between the Norfolk Naval Shipyard and the International Federation of Professional and Technical Engineers, Local No. 1 initially approved on 21 September 1971 will remain in full force and effect until 31 December 1973 unless terminated earlier by the approval of a new agreement.
>
> It is further agreed and understood that further continuation of the agreement will be made if it is mutually agreed that negotiations are proceeding satisfactorily."

Thereafter, in November of 1973, Respondent forwarded to you its proposals for a new agreement and proposed ground rules for ensuing negotiations. There is no evidence of a response by the Union; on December 7, 1973, Respondent again requested negotiations. By letter dated December 7, 1973, you asserted that you considered the existing contract had been extended for two years by mutual agreement and were unwilling to negotiate on matters other than those necessary to bring the agreement into conformance with applicable law, rules or regulations. Respondent asserts, and there is no evidence to the contrary, that it requested negotiations on January 3 and 11, 1974. 1/

In October of 1974, you were advised by Respondent that, because the contract that expired on December 31, 1973 and no new agreement had been executed, there was no longer a negotiated grievance procedure and "to enable the unit employees to have a viable avenue within which to present and seek relief from matters personal to them, we are making the shipyard's administrative grievance (shipyard instructions about which you were originally consulted) fully and solely applicable to all employees within the unit wherein IFPTE, Local 1, is the exclusive recognized representative." The argument you make is that the Activity, by its letter of July 17, 1973, agreed only to bring the contract into conformity with the Executive Order and Agency regulations, and, therefore, the Activity was obligated thereafter to discuss only such changes.

1/ On January 2, 1974, you initiated action in the Federal District Court to enjoin Respondent from changing working hours of employees in your unit (the issue is not present before us) and, apparently, to secure a decision from the Court that your contract had been extended for two years. During 1974, the Federal Court directed that the entire matter be arbitrated. There is no evidence that arbitration has occurred.

You argue essentially that the contract renewed itself or that Respondent's letter of July 17, 1973 obligated it to execute a contract changing only the grievance procedure. With respect to the first argument, the evidence fairly shows that the contract did not contain a renewal clause but, even if it did, the evidence shows that an extension agreement terminating on December 31, 1973 was executed by the parties. With respect to the second argument, the evidence shows that, even if the July 17th letter was ambiguous, at a meeting on July 19, 1973, the Union was aware that it was the intention of Respondent to negotiate various changes in the agreement. 2/ I find, therefore, that the evidence fails to show that the contract either renewed itself or that the Activity had agreed to execute an agreement restricted to conforming the negotiated grievance procedure to existing laws, rules or regulations.

The evidence fairly shows that Respondent was and is not willing to confine renegotiations only to the negotiated grievance procedure or that the Union was willing to negotiate contract changes other than the negotiated grievance procedure. The question remains then: Is it a violation of the Executive Order for the Activity to unilaterally alter a grievance procedure which had been premised on a collective bargaining agreement? In the circumstances described above, (1) that the contract terminated December 31, 1973, (2) that the Union refused to negotiate with respect to items other than the negotiated grievance procedure and, (3) that Respondent had made repeated attempts to renegotiate an agreement, I find that there is no reasonable basis for the issuance of a notice of hearing based upon the unilateral imposition of a grievance procedure.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

2/ There is no evidence, even if the Activity had offered to negotiate only a change in the negotiated procedure, that the Union accepted such a unilateral offer before the July 19th meeting.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business April 17, 1975.

Sincerely,

Joseph A. Senge
Acting Assistant Regional Director
for Labor-Management Services

cc: E. T. Westfall, Rear Admiral
Commander, U. S. Navy
Norfolk Naval Shipyard
Portsmouth, Va. 23709
(Cert. Mail No. 954674)

A. Gene Niro, Branch Representative
Branch Regional Office of Civilian Manpower Management
Department of the Navy
Philadelphia Regional Office/Boston Branch
495 Summer Street
Boston, Mass. 02210

bcc: Dow E. Walker, AD/WAO
ATTN: Earl Hart, AAD

S. Jesse Reuben, OFLMR

John Gribbin, CSC/Lbr. Rel. Off.

Ms. Janet Cooper
Staff Attorney
National Federation of
Federal Employees
1737 H Street, N.W.
Washington, D. C. 20006

AUG 27 1975

Re: Treasury Disbursing Center
Austin, Texas
Case No. 63-5451(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted inasmuch as the Complainant has failed to provide evidence, in accordance with Section 203.(6)(e) of the Assistant Secretary's Regulations, to establish a reasonable basis for the complaint.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

May 20, 1975

In reply refer to: 63-5451(CA)
Treasury-Disbursing Center, Austin
Texas/NFFE LU 1745

Ms. Janet Cooper, Staff Attorney
National Federation of Federal Employees
1737 H Street, N. W.
Washington, D. C. 20006

Certified Mail #212517

Dear Ms. Cooper:

The above-captioned case alleging violations of Section 19(a) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant. Although you were afforded additional opportunity to submit evidence in support of the allegations, none has been received.

In this regard, you have not demonstrated that the chain-of-command clearance of interbranch personnel communication is a change in policy. Rather, it appears that this has been the policy of the Respondent, that employees wising to communicate with employees of other branches clear their request with the supervisors involved. Further, you have offered no names of non-union members who have been treated differently than Mr. Borek. In the absence of any evidence of disparate treatment, based on union considerations, no basis for the complaint can be established.

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor Management Relations, 14th & Constitution, N.W., Washington, D. C. 20216, not later than close of business June 4, 1975.

Sincerely,

Cullen P. Keough
Assistant Regional Director
for Labor-Management Services

cc: Mr. George Clark, Director
Treasury Disbursing Center
P. O. Box 2907
Austin, Texas 78767

Certified Mail #212518

Ms. Delma Thames, President
National Federation of Federal Employees
Local Union 1745
1615 East Woodward Street
Austin, Texas 78742

Certified Mail #212519

Mr. Oscar E. Masters, Area Director
U. S. Department of Labor
Labor-Management Services Administration
555 Griffin Square Building, Room 501
Griffin and Young Streets
Dallas, Texas 75202

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-12-75

571

Mr. Joseph R. Colton
National Field Representative
National Treasury Employees Union
Suite 1101, 1730 K Street, N. W.
Washington, D. C. 20006

Re: U.S. Customs, Region IV
Miami, Florida
Case No. 42-2711(CA)

Dear Mr. Colton:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that insufficient evidence was provided to establish a reasonable basis for the instant complaint. Moreover, it was noted that the Complainant failed to serve a copy of the request for review on the Assistant Regional Director in accordance with Section 203.8(c) and 202.6(d) of the Assistant Secretary's Regulations.

Under these circumstances, and as it is clear that in finding no discriminatory motivation the Assistant Regional Director considered the 19(a)(2) aspect of the complaint, which he inadvertently characterized as 19(a)(3), your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300
ATLANTA, GEORGIA 30309

March 17, 1975

Mr. Vincent L. Connery
National President
National Treasury Employees Union
and NTEU, Chapter 106
1730 K Street, N. W., Suite 1101
Washington, D.C. 20006

In reply refer to: U. S. Customs, Region IV
Miami, Florida
Case No. 42-2711(CA)

Dear Mr. Connery:

The above-captioned case alleging violations of Section 19 of the Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Although Employee Loudis' Section 1(a) activities were known to Respondent at the time of his reassignment to the Miami International Airport, there is no basis for finding that Respondent's decision to reassign Loudis was motivated as a reprisal against Loudis for having engaged in union activity nor is there evidence that the assignment was made for the purpose of chilling union activities among Respondent's employees.

Investigation discloses that Loudis himself took certain steps which called attention to the fact that he was being treated for medical reasons and that, because of this, his duty should be limited. Respondent thereupon took further steps which confirmed that Loudis' duty should, in fact, be restricted. The assignment to the Miami International Airport did not result in a loss of regular pay. While Complainant and Loudis may feel that the duties assigned to Loudis at the Airport are "demeaning," it should be noted that other employees in the Customs Service of Region IV are assigned comparable duties at the Airport and until Spring of 1974, Customs Patrol Officers were frequently assigned to the Airport. Based on all the circumstances,

including my finding that Respondent decided on Loudis' assignment only after a diligent, objective investigation of Loudis' health, I find and conclude that there is no reasonable basis for finding that Loudis' assignment was violative of Section 19(a)(1) and (3) of the Order.

In finding that there is no reasonable basis for the complaint, I have considered Respondent's position that Complainant has no standing to file a complaint under the Order. I reject that position. The fact that Complainant is not recognized as the exclusive representative does not bar Complainant from filing a complaint under the Order. It has such a right irrespective of whether it demonstrates a prima facie showing. Should there be no prima facie showing, complaint is then dismissable on those grounds, not on the grounds that a labor organization not holding exclusive recognition has no standing.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business March 31, 1975.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

cc:

Mr. Albert Bazemore
Acting Regional Commissioner
U.S. Customs Service, Region IV
7370 N.W. 36th Street, Suite 300
Miami, Florida 33166

Mr. Robert M. Tobias, General Counsel
National Treasury Employees Union
Suite 1101, 1730 K Street, N.W.
Washington, D. C. 20006

Mr. Fred Loudis, President
Chapter 106, National Treasury
Employees Union
800 N.W., 145th Terrace
Miami, Florida 33168

Mr. Tom Ross, Labor & Employee
Relations
Plaza Executive Center, Suite 300
7370 N.W., 36th Street
Miami, Florida 33166

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-12-75

Robert M. White, Esq.
White and Selkin 572
1500 Virginia National Bank Building
One Commercial Place
Norfolk, Virginia 23510

Re: Supervisor of Shipbuilding
Conversion and Repair, U.S.N.
Case No. 22-5860(CA)

Dear Mr. White:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case alleging violations of Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings in this matter are unwarranted. With respect to the first allegation concerning the denial of official time, it was noted that the Complainant presented no evidence indicating that the parties' negotiated agreement granted the Complainant the use of official time to assist in the preparation of employee grievances. See, in this regard, Department of the Air Force, Base Procurement Office, Vandenberg Air Force Base, California, A/SLMR No. 485, where it was held that the use of official time to conduct union business is not an inherent right granted under the Order. As to the second allegation regarding the Activity's issuance of a parking instruction, the evidence reveals that the Complainant participated on the Committee which considered the parking instruction and that the Activity considered the Complainant's views on the matter prior to announcing the new instruction. Under these circumstances, I find no merit to the Complainant's contention that the Activity refused to meet and confer with Complainant in this regard.

Accordingly, and noting also the absence of any evidence that the Activity's conduct was based on discriminatory considerations, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

May 22, 1975

Mr. Luther Credle
President
NAGE, Local R4-2
1337 Elbow Road
Chesapeake, Virginia 23320
(Cert. Mail No.734183)

Re: Supervisor of Shipbuilding
Conversion and Repair, U.S.N.
File No. 22-5860(CA)

Dear Mr. Credle:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted since a reasonable basis for the complaint has not been established.

Your complaint alleged two separate and distinct allegations. The first, that Respondent had refused permission to permit representatives of your organization to meet with certain unit employees on official time to discuss a grievance they had filed pursuant to the Agency grievance procedure. The second allegation averred that the Respondent refused to meet and confer with representatives of your organization on new parking instructions prior to implementation.

The investigation revealed that a number of employees had filed grievances with the Activity pursuant to the Agency grievance procedure. A representative of your organization, Carmine T. Corrado, requested that official time be made available to these employees to meet with him in order to permit him to investigate and prepare for the grievances. Respondent refused, averring that the request was inappropriate and unreasonable but it did offer to permit him to meet with the employees as a group on official time. Your organization asserts that this refusal to permit Mr. Corrado time with each employee so that he could investigate and prepare for the presentation of a grievance violated Sections 19(a)(1)(2) and (6) of the Executive Order. I am of the opinion

that the facts related above do not establish an unfair labor practice. The Assistant Secretary has asserted that an Agency grievance procedure does not result from any rights under the Executive Order since such a procedure is applicable to all employees of the Agency whether or not they are in exclusively recognized units; that even if the Agency improperly fails to apply its own grievance procedure, such a failure, standing alone and in the absence of anti-union considerations and motivation does not interfere with rights assured under the Order. 1/ No evidence was introduced to show anti-union animus by the Respondent. I find that you have not established a reasonable basis for the issuance of a Notice of Hearing.

With respect to the allegation that the Respondent failed to meet and discuss with you the new parking instructions prior to their implementation, you introduced no evidence to sustain your allegation other than the assertion in the complaint. The facts show that you were on the committee with management representatives to discuss new parking instructions; that you disagreed with the final conclusion of the committee but submitted a written minority report which was considered by Respondent; that after receiving the report you discussed your position again with the representatives of the Respondent. With respect to the parking allegation I find that you have failed to establish a reasonable basis for the issuance of a Notice of Hearing.

I am therefore dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 6, 1975.

Sincerely,

Kenneth L. Evans

KENNETH L. EVANS
Assistant Regional Director
for Labor-Management Services

1/ Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR 334.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-12-75

Mr. Elbridge W. Smith
National Area Director
National Customs Service
Association
469 Ena Road, Apt. 2502
Honolulu, Hawaii 96815

573

Re: Department of the Treasury
U. S. Customs Service, Region VIII
Case No. 73-619(CA)

Dear Mr. Smith:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case alleging violation of Section 19(a)(1), (2) and (6) of the Order.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted in that a reasonable basis for the complaint was not established. In this regard, it was noted particularly that although the Complainant alleged that the Respondent unilaterally changed an existing policy by refusing to take written minutes at sub-district labor-management meetings and thereby abrogated the parties' negotiated agreement, it did not present any evidence with respect to the existence of a policy of taking written minutes at such meetings. Moreover, it appears that the matter herein involves essentially a good faith dispute between the parties concerning the interpretation and application of Article VI, Section 5 of their negotiated agreement and that the negotiated agreement provides a procedure to resolve such disputes. Cf., in this latter regard, General Services Administration, Region 5, Public Buildings Service, Chicago Field Offices. A/SLMR No. 528.

Accordingly, and noting the absence of any evidence of discriminatory motivation, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

REGIONAL OFFICE

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102

May 16, 1975

Mr. Jered S. Nelson
National Vice President
National Customs Service
Association, Region VIII
294 - 27th Avenue
San Francisco, California 94121

Re: U.S. Customs Service,
Region VIII -
NCSA
Case No. 73-619

Dear Mr. Nelson:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

It is alleged, in substance, that Sections 19(a)(1), (2) and (6) of the Order were violated by Respondent's unilateral discontinuance of minute taking at labor-management meetings. The investigation discloses that the negotiated agreement between the parties provides that written minutes of labor-management meetings will be taken. The investigation further discloses that the parties disagree as to whether such provisions in the negotiated agreement extend to labor-management meetings at a sub-unit level. In these circumstances, and since the negotiated agreement provides a procedure to resolve the varying interpretations of the negotiated agreement, it is concluded the parties should be left to their remedies under their negotiated agreement to resolve this question. Moreover, Complainant submitted no evidence in support of its allegation of a violation of Section 19(a)(2) of the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216, not later than the close of business on May 29, 1975.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Assistant Regional Director/LMSA

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

9-12-75

574

Mr. Juan Bernal
President, Local 1112
National Federation of
Federal Employees
Building 240
Ellington Air Force Base, Texas 77209

Re: USAF-924th TA Group
705th TATS
Ellington AFB, Texas
Case No. 63-5283(CA)

Dear Mr. Bernal:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint alleging violations of Section 19(a)(5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established. In reaching this conclusion, it was noted that there was insufficient evidence to establish a reasonable basis for the allegation that the rescheduled lunch period constituted a unilateral change in personnel policies or other matters affecting the general working conditions of employees. Moreover, with respect to your contention that the parties' negotiated agreement requires a minimum of one week's notice prior to changing hours of duty, in my view, noting the contrary interpretation of the agreement by the Respondent, I find that the matter involves essentially a good faith dispute between the parties concerning the interpretation of their agreement and, therefore, does not constitute an unfair labor practice. See, in this regard, General Services Administration Region, Public Buildings Service, Chicago Field Office, A/SLMR No. 528.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

May 23, 1975

In Reply Refer To: 63-5283(CA)
USAF-924th TA GRP-705th TATS
Ellington AFB, Tx./NFFE, LU 1112

Certified Mail #212535

Mr. Juan Bernal, President
National Federation of Federal Employees
Local Union 1112
2042 Santa Rosa
Houston, Texas 77023

Dear Mr. Bernal:

The above-captioned case alleging violation of Section 19 of Executive Order 11491, as Amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established and you have not sustained the burden of proof in accordance with Section 203.6(e) of the Regulations. In this regard, no evidence was offered to substantiate the allegation that the Agency refused to accord appropriate recognition to a labor organization qualified for such recognition or refused to consult, confer, or negotiate with a labor organization as required by Executive Order 11491.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based, and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington, D. C. 20216, not later than close of business June 9, 1975.

Sincerely,

Cullen P. Keough
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-12-75

575

Mr. Ralph Walding
Post Office Box 34
Pinckard, Alabama 36371

Re: Wiregrass Metal Trades Council
and International Union of
Operating Engineers, AFL-CIO,
Local 395
Fort Rucker, Alabama
Case No. 40-6009(CO)

Dear Mr. Walding:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, and based on his reasoning, that a reasonable basis for the instant complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

April 15, 1975

Mr. Ralph W. Walding
Post Office Box 34
Pinckard, Alabama 36371

In reply refer to: Wiregrass Metal Trades Council and
International Union of Operating
Engineers, Local 395
Case No. 40-6009(CO)

Dear Sir:

The above captioned case alleging violation of Section 19(b)(6) of Executive Order 11491, as amended, has been investigated and considered carefully.

With respect to Respondent International Union of Operating Engineers, Local 395, no evidence has been furnished you requested that labor organization to represent you. In that connection, it is noted that Local 395 is not a party to the current labor agreement nor was it a party to a labor agreement with the Employer at any time material herein.

With respect to your allegation that the other named respondent, Wiregrass Metal Trades Council (WMTC) stalled and procrastinated, you failed to furnish a precomplaint charge as required by Section 203.2(a) of the regulations of the Assistant Secretary which state, in pertinent part:

> (1) A charge in writing alleging the unfair labor practice must be filed directly with the party or parties against whom the charge is directed (hereinafter referred to as the respondent(s));
>
> (2) The charge must be filed within six (6) months of the occurrence of the alleged unfair labor practice;
>
> (3) The charge shall contain a clear and concise statement of the facts constituting the unfair labor practice, including the time and place of occurrence of the particular acts; and

The document dated February 11, 1974 referred to as the charge in Item 4A of the complaint form is not a precomplaint charge; it is the grievance you filed against the Activity. Therefore, your complaint is procedurally defective because you failed to file a charge.

Furthermore, you failed to bear the burden of proof that Respondent WMTC failed to pursue your grievance because of an irrelevant, unfair or invidious reason. On February 27, 1974, Respondent informed the Activity that it was ready to proceed with Step 4 of the grievance procedure. After the Respondent informed WMTC that the grievance should be submitted under the then current contract, not the recently expired agreement, WMTC promptly (April 1, 1974) attempted through your representative, Charles White, to have you comply with the grievance procedure. WMTC requested that you submit a statement in support of your grievance. You neglected to timely accomplish this. As a result the Activity rejected the grievance. Under the circumstances, the fact that your grievance was not fully considered is not attributable to the WMTC's failure to fulfill its obligations under Section 10(e) of the Order which states, in pertinent part:

> It [the exclusive representative] is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership.

The exclusive representative is required to accord you fair representation, not perfect representation or representation which you or others feel should be without flaw. There is no evidence that the representation the WMTC furnished you or tried to furnish you was unfair to the extent that the WMTC violated Section 19(b)(6) of the Order or that the WMTC interfered with your rights under the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(e) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business April 28, 1975.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-30-75

Mr. Frank J. Carpenter
President, Local 63
National Federation of
Federal Employees
2762 Murray Ridge Road
San Diego, California 92123

576

Re: Navy Commissary Store Complex
San Diego, California
Case No. 72-5250

Dear Mr. Carpenter:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the instant complaint alleging violation of Section 19(a)(5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established. Thus, in my view, the evidence did not establish that the Activity failed to meet and confer in good faith with the Complainant concerning the alleged unsafe working conditions or that it failed to make a good faith effort to carry out the understandings reached with the Complainant in the matter.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

REGIONAL OFFICE

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102

June 26, 1975

Mr. Frank J. Carpenter
President, Local 63
National Federation of
Federal Employees
2762 Murray Ridge Road
San Diego, California 92123

Re: Navy, Commissary Store
Complex, San Diego -
NFFE, Local 63
Case No. 72-5250

Dear Mr. Carpenter:

The above-captioned case alleging violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted, inasmuch as a reasonable basis for the complaint has not been established.

It is alleged that Respondent violated Sections 19(a)(5) and (6) of Executive Order 11491 by failing to take effective remedial action to correct unsafe working conditions with respect to unlicensed personnel operating fork lift trucks, thereby refusing to confer in good faith and not according proper recognition to the exclusive representative.

The investigation disclosed that Respondent met and conferred over various complained of safety violations. In these circumstances, and notwithstanding the alleged failure of Respondent to effectively remedy the unsafe conditions, it is concluded that there is not a reasonable basis for further proceedings in this matter.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

2.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business on July 9, 1975.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Assistant Regional Director/LMSA

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-30-75

577

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1737 H Street, N. W.
Washington, D. C. 20006

Re: Veterans Administration
Data Processing Center
Austin, Texas
Case No. 63-5450 (CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint filed in the above-named case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

Under all of the circumstances, I find that a reasonable basis for the instant complaint has been established. Thus, in my view, the signed statement submitted by Local President Delma Thames setting forth alleged instances of disparate treatment by the Respondent Activity and the denial of these allegations by the Respondent Activity raise factual issues which can best be resolved on the basis of evidence adduced at a hearing. Accordingly, your request for review is granted and the instant case is remanded to the Assistant Regional Director who is directed to reinstate the complaint and, absent settlement, to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

June 26, 1975

In reply refer to: 63-5450(CA)
VA Data Processing Center, Austin,
Texas/NFFE LU 1745, Ind.

Ms. Janet Cooper, Staff Attorney
National Federation of Federal Employees
1737 H Street, N. W.
Washington, D. C. 20006

Certified Mail #212638

Dear Ms. Cooper:

The above-captioned case alleging violations of Sections 19(a)(1) and (2) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant. Although you were contacted on June 9, 1975, by the compliance officer to whom the case was assigned and thus afforded additional opportunity to submit evidence in support of the allegations, none has been received.

In this regard, no evidence has been submitted which would establish differential treatment of Ms. Thames with regard to counseling concerning tardiness or the restriction of incoming telephone calls or office visits during those four hours per day when she is at her official duty station due to her union activities.

While the Assistant Secretary has held that assignment of a "fair share" of work load to a union officer was violative of Section 19(a), he emphasized that use of official time for the conduct of union business is not an inherent right under the Order in the absence of negotiated contractual provision. Nothing submitted by you demonstrates any inconvenience or adverse impact upon the preparation or presentation of Ms. Pollard's EEO complaint. Differential amounts of official time allowed two union representatives for the preparation and presentation of the complaint of a third union representative does not establish disparate treatment or anti-union animus. Thus, you have failed to sustain the Complainant's burden of proof at this stage of the proceedings, imposed by Section 203.6(e) of the Assistant Secretary's Regulations.

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business July 11, 1975.

Sincerely,

Gordon E. Brewer

Gordon E. Brewer
Acting Assistant Regional Director
for Labor-Management Services

cc: Mr. C. B. Drinkard, Director
Veterans Administration Data Processing Center
1615 East Woodward Street
Austin, Texas 78742

Certified Mail #212639

Mr. Ted W. Myatt
District Counsel
Veterans Administration
Regional Office
1400 North Valley Mills Drive
Waco, Texas 76710

Certified Mail #212640

Office of the General Counsel (023E)
Veterans Administration
Central Office
Washington, D. C. 20420

Certified Mail #212641

Mr. Oscar E. Masters
Area Director
U. S. Department of Labor
Labor-Management Services Administration
555 Griffin Square Building, Room 501
Griffin & Young Streets
Dallas, Texas 75202

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
9-30-75

578

Mr. P. W. Grant
President, Local 1633
American Federation of Government
Employees, AFL-CIO
P. O. Box 17092
Houston, Texas 77031

Re: Veterans Administration Hospital
Houston, Texas
Case No. 63-5434(CA)

Dear Mr. Grant:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-named case.

I find, in agreement with the Acting Assistant Regional Director, that a reasonable basis for the instant complaint has not been established in that neither Holcombe's alleged right to representation nor the alleged improper statements of the Activity's Director and Personnel Director were raised in a pre-complaint charge. See, in this regard, Section 203.2(b) of the Assistant Secretary's Regulations. Furthermore, no evidence was presented to support the allegation that Holcombe was improperly denied representation during a "formal" discussion with agency management. See, in this regard, Section 203.6(e) which states, in relevant part that, "The Complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in the complaint."

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

June 4, 1975

In reply refer to: 63-5434(CA)
Veterans Administration Hospital
Houston, Texas/AFGE LU 1633, AFL-CIO

Mr. P. W. Grant, President
American Federation of Government Employees
Local Union 1633, AFL-CIO
P. O. Box 17092
Houston, Texas 77031

Certified Mail #212577

Dear Mr. Grant:

The above-captioned case alleging violations of Section 19(a) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant. Although you were afforded additional opportunity to submit evidence in support of the allegations, none has been received.

From evidence supplied this office, it appears that Mrs. Diana Mitchell is a professional employee (Registered Nurse), specifically excluded from the unit for which American Federation of Government Employees, Local Union 1633, is the currently certified exclusive representative. Until such time as professionals are included in an appropriate bargaining unit, represented by a certified exclusive bargaining agent, there can be no obligation on the part of Activity Management to recognize any labor organization as an agent of a professional employee. Thus, no basis for a complaint that an exclusive representative has been denied opportunity for representation in violation of Section 19(a) has been established. In addition, you have not submitted any evidence which would indicate that the Activity engaged in violative conduct regarding Mrs. Mitchell's "rights" enunciated in Section 1(a) of the Order.

Regarding the alleged violative conduct by the Activity directed toward Chief Steward Abraham Gordon, you have not established with the evidence submitted that such violative conduct actually occurred nor does it appear this was a basis of a pre-complaint charge to the Activity pursuant to Section 203.2(a) of the Regulations.

You have not submitted evidence to establish that Mrs. Iola Holcombe was denied union representation during a "formal discussion" within the meaning of Section 10(e) of the Order, nor is there any evidence which would indicate that this matter was the basis for a pre-complaint charge to the Activity pursuant to Section 203.2(a) of the Regulations.

Regarding the alleged promise of a promotion to Mrs. Holcombe, the "burden of proof" has not been met since no evidence was submitted as to "who" made the promise and "who" denied the promotion.

Since the issue of nonselection for promotion has been raised in a grievance procedure, you are barred by Section 19(d) of the Order from referring this matter to the Assistant Secretary. It appears that the Activity proceeded on this grievance based upon their interpretation of the existing contract. Procedures were available to you in Part 205 of the Regulations to refer questions to the Assistant Secretary as to whether or not a grievance is on a matter subject to the grievance procedure in an existing contract.

Finally, you allege as violative conduct statements allegedly made on October 11, 1974, by Mr. Leo Luka and on January 8, 1975, by Dr. Claiborne. I find no evidence that these statements ever formed the basis of a pre-complaint charge to the Activity pursuant to Section 203.2(a) of the Regulations.

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business June 19, 1975.

Sincerely,

Gordon E. Brewer

Gordon E. Brewer
Acting Assistant Regional Director
for Labor-Management Services

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1737 H Street, N. W.
Washington, D. C. 20006

SEP 30 1975

Re: VA Data Processing Center
Austin, Texas
Case No. 63-5449(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings in this matter are unwarranted. Thus, in my view, insufficient evidence was presented to establish a reasonable basis for the allegation that Robert Grant was not promoted because of his union membership. In this respect, it should be noted that Section 203.6(e) of the Assistant Secretary's Regulations provides, in pertinent part, that the Complainant shall bear the burden of proof at all stages of the proceedings regarding matters alleged in its complaint.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

In reply refer to: 63-5449(CA)
VA Data Processing Center, Austin,
Texas/NFFE LU 1745, Ind.

Ms. Janet Cooper, Staff Attorney Certified Mail #
National Federation of Federal Employees
1737 H Street, N. W.
Washington, D. C. 20006

Dear Ms. Cooper:

The above-captioned case alleging violations of Section 19(a) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.5(c) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant. Although you were afforded additional opportunity to submit evidence in support of the allegations, none has been received.

In this regard no evidence has been submitted that Mr. Robert Grant ever applied under a merit staffing announcement or that such application was rejected. If in fact, such was the case, no evidence which might establish a connection between such personnel action and his union membership on activity has been made available. While you allege that non-union employees were promoted, you offer nothing in support of your assertion that these promotion actions were based on non-union status.

However, nothing has been offered to date to suggest that Mr. Grant competed unsuccessfully with non-union employees under the same promotion announcement. In the absence of any evidence of disparate treatment, based upon union considerations, no basis for the complaint can be established.

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor Management Relations, 14th & Constitution, N.W., Washington, D. C. 20216, not later than close of business

Sincerely,

Cullen P. Keough
Assistant Regional Director
for Labor-Management Services

cc: Mr. C. B. Drinkard, Director Certified Mail #
Veterans Administration Data Processing Center
1615 East Woodward Street
Austin, Texas 78742

Mr. Ted W. Myatt Certified Mail #
District Counsel
Veterans Administration
Regional Office
1400 North Valley Mills Drive
Waco, Texas 76710

Office of the General Counsel (023E) Certified Mail #
Veterans Administration
Central Office
Washington, D. C. 20420

Mr. Oscar E. Masters, Area Director
U. S. Department of Labor
Labor-Management Services Administration
P. O. Box 239
Dallas, Texas 75221

AJL/pj

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

9-30-75

580

Mr. Thomas Daniels
President, American Federation of
Government Employees, AFL-CIO,
Local 1498
P. O. Box 322
Eatontown, New Jersey 07724

Re: U.S. Army Electronics Command (ECOM)
Fort Monmouth, New Jersey
Case No. 32-3938(CA)

Dear Mr. Daniels:

This is in connection with your request for review, seeking reversal of the Acting Assistant Regional Director's partial dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (2) and (5) of Executive Order 11491, as amended.

I find that the request for review is procedurally defective since it was filed untimely. In this regard, it is noted that the Acting Assistant Regional Director issued his decision in the instant case on August 18, 1975. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary no later than the close of business September 3, 1975. Your request for review, dated September 3, 1975, was, in fact, received by the Assistant Secretary subsequent to September 3, 1975. Under these circumstances, I find that the request for review in this matter was filed untimely.

Accordingly, the merits of the subject case have not been considered; and your request for review, seeking reversal of the Acting Assistant Regional Director's decision dismissing the Section 19(a)(2) and (5) allegations of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

Suite 3515
1515 Broadway
New York, New York 10036

August 18, 1975 In reply refer to Case No. 32-3938(CA)

Thomas Daniels, President
American Federation of Government
Employees, AFL-CIO
Local Union 1498
Post Office Box 322
Eatontown, New Jersey

Re: USA Electronics Command (ECOM)
Ft. Monmouth, New Jersey

Dear Mr. Daniels:

The above captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. Although I intend to issue a Notice of Hearing with regard to the alleged violation of Section 19(a)(1), it does not appear that further proceedings are warranted with regard to the alleged 19(a)(2) (5) violations inasmuch as a reasonable basis for those portions of the complaint has not been established.

You contend that Respondent has discouraged membership in Local 1498, in violation of Section 19(a)(2) of the Order, by intentionally promoting you to an alleged supervisory position with the intent of removing you from office. Respondent contends that its only reason for assigning you to the alleged supervisory position was the unavailability of a non-supervisory position at the time of the reorganization of the U.S. Army Electronics Command. No evidence has been adduced which would form a basis to conclude that Respondent's actions were based upon anti-union considerations nor is there any evidence of discriminatory motivation or disparity of treatment based on union membership considerations.

You also contend that Respondent has refused to recognize you as the President of Local 1498 and thus has refused to accord appropriate recognition to Local 1498 in violation of Section 19(a)(5) of the Order. No evidence has been adduced which

Thomas Daniels, President
AFGE, AFL-CIO, Local Union 1498 Case No. 32-3938(CA)

would form a basis to conclude that Respondent has failed to accord appropriate recognition to Local 1498. Rather, the evidence discloses that subsequent to your promotion to an alleged supervisory position, Respondent dealt with and continued to recognize Local 1498 as the exclusive representative of certain employees of the U.S. Army Electronics Command.

Accordingly, I find no basis to conclude that Sections 19(a)(2) and (5) of the Order may have been violated. I am, therefore, dismissing that portion of the complaint pertaining to the alleged violations of Sections 19(a)(2) and (5).

As stated above, I intend to issue a Notice of Hearing on the alleged 19(a)(1) violation.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor Management Relations, ATT: Office of Federal Labor Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 3, 1975.

Sincerely yours,

WILLIAM O'LOUGHLIN
Acting Assistant Regional Director
New York Region

Mr. Carmen R. Delle Donne
President, AFGE, AFL-CIO, Local 2578
2015 Woodreeve Road
Avondale, Maryland 20018

SEP 30 1975

Re: National Archives and Records Service
General Services Administration
Case No. 22-5904(A&P)

Dear Mr. Delle Donne:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the instant case.

Contrary to the Assistant Regional Director, I conclude that, under the particular circumstances of this case, the issue whether the Activity provided the appropriate training or counseling to probationary employee Cynthia Baskett prior to her termination, in accordance with Article XI, Section 2 of the parties' negotiated agreement, is grievable under the negotiated grievance procedure. In reaching this determination, it was concluded that evidence established that Baskett's "resignation" was, in effect, a constructive discharge. In this regard, it was noted that on January 3, 1975, she was advised by the Activity that her probationary period would not be extended and that her employment would be terminated on January 10, 1975. Subsequently, the Activity would not permit her to withdraw her resignation submitted after the Activity's notification.

Under these circumstances, and noting that Article XI, Section 2 of the parties' negotiated agreement set forth certain procedures to be followed prior to management's termination of a probationary employee and that there is no contention, nor does the evidence establish, that the instant grievance is on a matter for which a statutory appeal procedure exists, the Assistant Regional Director's decision to dismiss the application in this matter is hereby set aside and your request for review is granted.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, U.S. Department of Labor, in writing, 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 3515, 1515 Broadway, New York, New York 10036.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

Activity

and

Case No. 22-5904(AP)

AFGE, LOCAL 2578

Applicant

REPORT AND FINDINGS

ON

GRIEVABILITY OR ARBITRABILITY

Upon an application for a Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

On January 10, 1975, the union filed a grievance on behalf of a terminated probationary employee as follows:

> "Management violated the Union-Management Agreement (Article 11, "Executive Order Requirement," Article XVI, Sec. 1 (as amended), and Sec. 4 "Promotions") in the termination of Cynthia Baskett. The relief sought is that of having the grievant restored to employment, adequately counselled and trained, and having a plan developed to remedy any deficiencies."

By letter dated February 13, 1975, the Activity rejected the grievance and asserted that the grievant had resigned of her own volition, had not been pressured into a resignation and, therefore, management did not violate the terms of the negotiated agreement.

The relevant provisions of the agreement in addition to grievance and arbitration clauses are as follows:

ARTICLE II: EXECUTIVE ORDER REQUIREMENT

In the administration of all matters covered by the Agreement, Management and the Union are ogverned by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published GSA procedures and regulations in existence at the time this agreement is approved; and by subsequently published GSA procedures and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher GSA level.

ARTICLE XI: COUNSELING AND TRAINING

Section 2, Probationary Employees. Prior to terminating a probationary employee, Management will ensure that every reasonable effort has been made adequately to counsel and/or train the employee and to devise a plan for remedying any performance deficiencies, in accord with the GSA Administrative Manual, DOA 5410.1, chap. 3-28, except that the appriasal required by chap. 3-28(a) shall be made not later than the end of the eighth month of such period. The employee shall be given the opportunity to read and initial the GSA Form 496, Probationary or Trial Period Appraisal Report. The Union recognizes that it is GSA's practice to provide probationary employees with two weeks' advance notice of termination unless unusual circumstances dictate otherwise.

ARTICLE XIII: GRIEVANCES

Section 1, Purpose and Coverage. This Article provides a procedure, applicable only to the Unit, for the consideration of grievances over the interpretation or application of this Agreement. This procedure does not cover any other matters, including matters for which statutory appeals procedures exist. It is the exclusive statutory appeals procedure available to Management and the Union and to the employees in the unit for resolving such grievances.....

ARTICLE XV: DISCIPLINARY ACTIONS

Section 1, Scope. Management's policies and procedures relating to adverse and disciplinary actions shall be in accord with the Federal Personnel Manual, Chapter 772, and its GSA implementation, GSA Order OAD P 6220.1

Section 2, Procedure. Management shall furnish to any employee in the Unit an extra copy of any notice of adverse or disciplinary action addressed to the employee. Attached to the extra copy shall be a statement informing the employee that he may present the copy to the Union or any other representative of his choice, should he wish to be represented.

3.

ARTICLE XVI. PROMOTIONS

Section 1, Promotion Plan. Management agrees to select employees for promotion in accordance with the GSA Promotion Plan (GSA Handbook, OAD P 3630.1, "Employees Appraisal System and Promotion Plan") which is freely available to all employees in offices at the branch level and above.

Section 4, Performance and Promotion Appraisals. Since performance and promotion appraisals and assessments of supervisory potential are used in the promotion process, the supervisor will discuss them with each employee whenever they are prepared. The employee shall sign these documents to indicate that he has seen and discussed such appraisals and assessments with his supervisor. Should an employee be on leave at the time such documents are prepared, the discussion and signing shall occur at the earliest opportunity after he returns from leave.

The union asserts that the grievant was a probationary employee and that Article XI, Section 2 sets forth the responsibilities management must fulfill prior to its termination of a probationary employee. The union also asserts that the resignation was forced or involuntarily proferred and that all provisions of the contract relating to termination should apply.

The position of the Activity is essentially that the agreement does not encompass employee resignations of any sort and, therefore, the issue is beyond the scope of the agreement. Since the agreement is silent on the matter and as the grievant had, in fact, resigned, the matter of whether or not management fulfilled its responsibilities under Article XI, Section 2 is moot.

For the purposes of my decision herein, I shall assume, and the investigation fairly supports, the following: On or about January 3, 1975 Ms. Cynthia Baskett, a unit employee, was informed by representatives of management that her probationary period would not be extended and that she was going to be terminated and that January 10, 1975 would be her last day of employment. The grievant was given the opportunity to resign but was told that the effective date must be no later than 5:15 p.m. on January 10, 1975. She executed such a document and, thereafter, she attempted to withdraw the resignation and the withdrawal request was not approved. The Applicant avers that Ms. Baskett requested that she be allowed to "seek counselling prior to signing the resignation" and was not permitted to do so. For the purpose of this report, I shall assume that Ms. Baskett was told that if she did not resign she would nevertheless be terminated on January 10th and that when she asked for outside assistance she was told that she would have to decide then and there whether to sign the resignation letter.

The Activity initially took the position that if the assertion was that Ms. Baskett was pressured into resigning then her termination was an adverse action under FPM Supplement 752-1, Section 51-2a(1) and was not grievable under Article XIII, Section 1 of the contract, which reads "This procedure does not cover any other matters, including matters for which statutory appeals procedures exist." The Activity has subsequently withdrawn such assertion and now avers that the grievance is not covered by the adverse action procedures of the FPM Chapter 752. The union concurs in this position and I see no reason to disagree.

It is clear that the grievance concerns employee Baskett's termination as a probationary employee. The particular articles of the agreement asserted to be violated by the termination go to the alleged failure of the Activity to provide the employee with counselling and training, proper performance and promotion appraisals. The relief sought "having the grievant restored to employment, adequately counselled and trained and having a plan developed to remedy any deficiencies," indicates that a grievance was filed because the Activity did not fulfill its alleged responsibilities pursuant to the terms of the contract, but the gravamen of the grievance was the termination.

Since this is so, we have to go to the contract itself to see whether the grievance is on a matter subject to the negotiated grievance procedure. Article XV cited above provides that management policies and procedures relating to adverse disciplinary actions will be in accord with the FPM Chapter 772. 1/ The FPM Manual in Chapter 752 states that probationary employees are not covered by the adverse actions set forth in the FPM Manual. The contract, therefore, does not apply to terminations for probationary employees. The union asserts that since this is so and there was, in fact, a termination, 2/ Article XI applies. Article XI describes the obligations of management towards probationary employees. Article XV sets forthethe procedures applicable to an employee who is the subject of an adverse or disciplinary action. If the terminated employee is probationary, he is not covered by the clause; if he is a non-probationary employee, then by statute the matter would not be subject to the contractual grievance procedure. In these circumstances, therefore, I find that the alleged failure of the Activity to comply with Article XI of the contract did not render the Ms. Baskett grievance a matter subject to the contractual grievance procedure.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

1/ Appeals to the Commission
2/ Para. 1 of the statement attached to application.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Office of Federal Labor-Management Relations, Washington, D.C. 20216, not later than close of business June 24, 1975

Kenneth L Evans

KENNETH L. EVANS, Assistant Regional Director for Labor-Management Services

DATED: June 9, 1975

Attachment - Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-30-75

582

Philip Collins, Esq.
National Association of Government
Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: Department of the Army
81st U.S. Army Reserve Command
Atlanta, Georgia
Case No. 40-5249(RO)

Dear Mr. Collins:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's decision not to open and count 134 previously lost mail ballots in the subject representation proceeding.

Under the circumstances herein, I find, in agreement with the Assistant Regional Director, and based on his reasoning, that the previously lost mail ballots should not be opened and counted. In reaching this conclusion, it was noted that a runoff election was held in this matter in which the NAGE participated. The evidence establishes that at least 108 of the ballots involved clearly were cast in the initial election in this matter based on the postmarks contained on the ballot envelopes. Moreover, of the remaining 26 ballots which were contained in envelopes without postmarks, the evidence establishes that 13 of the employees involved voted and had their votes tallied in the runoff election. Therefore, these 13 disputed mail ballots clearly were cast in the initial election. The evidence further establishes that 12 of the remaining ballots, contained in envelopes without postmarks, were cast by employees who had no record of having voted in either election and that one ballot was contained in an envelope which did not bear a signature and, therefore, must be considered void. Clearly, therefore, given the results of the runoff election in which as noted above, the NAGE participated, (84 votes for AFGE, 59 votes for NAGE, and 10 void ballots), the possibility of 12 additional ballots cast could not have been determinative.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's decision in this matter is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300
ATLANTA, GEORGIA 30309

June 19, 1975

Mr. Gary B. Landsman, Staff Counsel
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Avenue, N. W.
Washington, D. C. 20005

Mr. Charles E. Hickey
National Vice President
National Association of Government
Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Mr. Early W. Roberts, Jr.
81st U. S. Army Reserve Command
Post Office Box 54497
Atlanta, Georgia 30308

In reply refer to: 81st U. S. Army Reserve Command
Atlanta, Georgia
Case No. 40-5249(RO)

Gentlemen:

On April 29, 1975, the Area Director, Atlanta issued an ORDER TO SHOW CAUSE WHY BALLOTS SHOULD NOT BE OPENED AND COUNTED. The Order, copy of which is attached, sets forth the circumstances leading to the issuance of that Order.

In response to the Order, Local R1-176, National Association of Government Employees, Petitioner requested that 108 mail ballots be opened and counted and that the Area Director exercise his discretion to rule whether the other 26 unpostmarked ballots could have been mailed in the second election and should, therefore, not be included in the final tabulation of the results of the first election.

The position of the Intervenor, Local 81, American Federation of Government Employees, AFL-CIO, the labor organization certified on June 18, 1974, was that none of the ballots should be opened and counted and, therefore, the certification should not be disturbed.

The position of the Activity, 81st U. S. Army Reserve Command was that the 108 postmarked ballots and 26 unpostmarked ballots be opened and counted.

I have carefully considered the positions of all parties and I conclude that the 108 postmarked ballots and the 26 unpostmarked ballots should not be opened and counted.

My decision is based on the undisputed fact that there was no impropriety on the part of the Assistant Secretary in the supervision of the election but, more importantly on the undisputed fact that no timely objections were filed by the Activity or by the Intervenor based upon the allegation that the number of ballots cast in the initial election were insufficient to be representative of the wishes of the employees. I am persuaded by the salutary objective of stability in labor relations. To introduce a doctrine which would subject elections to collateral attack would upset, not help to achieve, the desirable objective of stability and finality to the election process. In arriving at my conclusion, I am not unmindful of the persuasive arguments of the Petitioner and the Activity which suggest that the principle of free choice should be given primacy in deciding whether or not the ballots should be opened even at the risk of disturbing the Intervenor's certification.

The preamble of the Order recognizes the importance of "the maintenance of constructive relationships between labor organizations and management officials." In order to facilitate this objective, absent timely filing of meritorious objections, there must be finality to the election process. While recognizing the weight to be given to the concept of free choice, under the circumstances in this case, I place primacy on the necessity of achieving finality and stability.

Accordingly, I find and conclude that there is insufficient cause to open and count the 134 "lost" mail ballots. Those ballots will remain unopened and not be counted. The certification issued to Local 81, American Federation of Government Employees, AFL-CIO, therefore, will remain undisturbed.

Any party aggrieved by my action may appeal such action to the Assistant Secretary by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. not later than the close of business July 7, 1975.

Sincerely yours,

SEYMOUR X ALSHER
Associate Assistant Regional Director
for Federal Labor-Management Relations

Attachment

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

9-30-75

583

Mr. Robert T. Preston
Personnel Officer
National Science Foundation
1800 G Street, N. W.
Washington, D. C. 20550

Re: National Science Foundation
Washington, D. C.
Case No. 22-3870(RO)

Dear Mr. Preston:

I have considered carefully your request for review seeking reversal of the Report and Findings on Objections of the Assistant Regional Director in the above-named case.

In agreement with the Assistant Regional Director, I find that the objections in this matter are without merit. With respect to your allegation concerning the representativeness of the election, it was noted that in National Science Foundation, A/SLMR No. 487, it was found that Program Managers were not management officials and that their supervisory status had to be evaluated on an individual basis. In this latter regard, it was determined that 5 out of 14 Program Managers were, in fact, supervisors within the meaning of the Order. Under these circumstances, in my view, your assumption that, as a result of the decision in A/SLMR No. 487, approximately 262 Program Managers were declared to be part of the bargaining unit is not supported by the evidence. Furthermore, the Program Managers were eligible to vote challenged ballots if they were uncertain concerning their voting eligibility. See, in this regard, Report on Ruling of the Assistant Secretary No. 53. Nor, in my judgment, may the subject election be set aside based upon the Activity's reliance upon its own improper conduct in admittedly encouraging individuals not to vote in the election based on their alleged ineligibility. See, in this regard, Department of the U.S. Army, U.S. Army Aviation Systems Command, St. Louis, Missouri, A/SLMR No. 315.

Based on these considerations, and noting also that no evidence was presented that any Program Managers requested and were refused ballots, I find that the objections in this

matter should be dismissed. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NATIONAL SCIENCE FOUNDATION

Activity

and Case No. 22-3870(RO)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3403

Petitioner

REPORT AND FINDINGS

ON

OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on November 6, 1973, an election by secret ballot was conducted under the supervision of the Area Administrator, Washington, D.C., on December 5, 1973. The results of the election as set forth in the revised Tally of Ballots are as follows:

TALLY OF BALLOTS FOR PROFESSIONAL EMPLOYEES:

Approximate number of eligible voters	30
Void ballots	0
Votes cast for inclusion in the nonprofessional unit	17
Votes cast for a separate professional unit	3
Valid votes counted	20
Challenged ballots	0
Valid votes counted plus challenged ballots	20

TALLY OF BALLOTS:

Approximate number of eligible voters	650
Void ballots	0
Votes cast for AFGE, Local 3403, AFL-CIO	113
Votes cast against exclusive recognition	16
Valid votes counted	129
Challenged ballots	0
Valid votes counted plus challenged ballots	129

Challenged ballots are not sufficient in number to affect the results of the election.

Objections to the conduct of the election were filed in the Washington Area Office on March 24, 1975 (attached hereto as Appendix A). In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Director has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to the investigation.

OBJECTION 1

A significant number of employees did not exercise their right to vote because they were under the assumption that they were management officials and, hence, not eligible to participate in the election pursuant to the provisions of Executive Order 11491, as amended.

OBJECTION 2

The Assistant Secretary, in his decision on the challenged ballots, found that Program Managers and their equivalents were not management officials within the meaning of the Order. As a result of this decision, more than approximately 262 Program Managers and equivalents were declared to be a part of the bargaining unit.

Background

An election by secret ballot was conducted under the supervision of the Area Administrator on December 5, 1973 among:

Voting Group A

All professional, General Schedule, Wage Grade and Excepted Service Employees employed by the National Science Foundation in the Washington, D.C. Metropolitan Area; excluding non-professional employees, confidential employees, temporary employees of less than 90 days, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order; and,

Voting Group B

All non-professional General Schedule, Wage Grade and Excepted Service Employees employed by the National Science Foundation in the Washington, D.C. Metropolitan Area; excluding professional employees, confidential employees, temporary employees of less than 90 days, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, and supervisors and guards as defined in the Order.

The Tally of Ballots issued as a result of the December 1973 election showed inconclusive results since in Voting Group A, sixteen (16) of twenty-seven (27) individuals voting, cast challenged ballots.

No objections to the conduct of the election on December 5, 1973 were filed.

A hearing on the sixteen (16) challenged ballots was held and, thereafter, the Assistant Secretary issued his decision on February 28, 1975 (National Science Foundation, A/SLMR No. 487) finding that two of the challengees were not employees of the Activity; five of the Program Managers or their equivalents were supervisors within the meaning of the Order; and, nine were neither management officials nor supervisors. Thereafter, the nine ballots were opened, counted and a Revised Tally of Ballots issued as indicated above. The objections were filed following the issuance of the revised Tally.

The objections essentially state that a significant number of the employees did not exercise their right to vote because they assumed they were ineligible, and that of approximately 262 Program Managers or equivalents who are now in the bargaining unit, a minimum number voted.

Petitioner's Position

The position of the American Federation of Government Employees, Local 3403, AFL-CIO, is as follows:

1. The objection to the election is not timely filed pursuant to Section 202.20 of the Regulations since it was filed more than five (5) days after the initial Tally of Ballots issued on December 5, 1973;

2. The Activity has not borne the burden of proof since it has offered nothing to show that, in fact, a single employee failed to exercise a right to vote;

The Activity's objections to the election stem from the fact that the Assistant Secretary found Program Managers and their equivalents not to be management officials and included them in the bargaining unit. The Activity argues that, prior to the election it assumed that Program Managers and their equivalents were management officials and, therefore, before the election in December 1973 held orientation sessions with them telling them that they met the Assistant Secretary's definition of management official and were to be excluded from the unit.

It is clear, however, that pursuant to Section 202.20(b), the objections should have been filed within five days after the Tally of Ballots was furnished on December 5, 1973 and I so find.

I also reject the assertion that since there are approximately 260 Program Managers and equivalents who are part of the bargaining unit as a result of the Assistant Secretary's decision in A/SLMR 487 and confusion was created in the minds of these eligible employees prior to the vote, the election should be rerun:

(1) There is no evidence that there ever was any agreement by the Petitioner that it agreed that all Program Managers or equivalents should be excluded.1/

(2) No evidence was offered to demonstrate that anyone eligible to vote was, in fact, persuaded not to vote.

(3) The Activity, albeit unknowingly, was responsible for the actions which it now claims should sustain a rerun.

(4) The issue before me has been raised for the first time after months of case processing and after the tally.

I conclude, therefore, that for all the reasons detailed above, no improper conduct occurred affecting the results of the election.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for

1/ The records show that the Assistant Secretary would find some of the individuals with the classification at issue to be supervisors and other employees eligible to vote.

review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business May 29, 1975.

Dated: May 14, 1975

Kenneth L Evans

KENNETH L. EVANS, Assistant
Regional Director for Labor-
Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-30-75

584

Ms. Lisa Renee Strax
Associate Counsel
National Federation of Federal
Employees
1737 H Street, N. W.
Washington, D. C. 20006

Re: Keesler Technical Training Center
Keesler Air Force Base, Mississippi
Case No. 41-4017(CA)

Dear Ms. Strax:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's decision approving a settlement agreement in the subject case.

In your request for review, you contend that the Acting Assistant Regional Director disregarded the Complainant's objections in approving the settlement agreement and that the agreement does not contain adequate relief in that it lacks a requirement for the posting of a notice.

Under the circumstances, and noting particularly that the approved settlement agreement includes a return to the status quo and a posting of a notice to employees, I agree with the action of the Acting Assistant Regional Director in approving the settlement agreement in the instant case. Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's decision approving the settlement agreement, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300
ATLANTA, GEORGIA 30309

June 12, 1975

Ms. Lisa Renee Strax, Associate Counsel
National Federation of Federal Employees
1737 H Street, N. W.
Washington, D. C. 20006

In reply refer to: Keesler Technical Training Center
Keesler Air Force Base, Mississippi
Case No.-41-4017(CA)

Dear Ms. Strax:

Enclosed herewith is a copy of the settlement agreement and Notice to Employees approved by the undersigned in the above-entitled matter. A copy of my letter to the respondent regarding compliance with the terms of the settlement agreement is enclosed for your information.

Inasmuch as you have advised that you object to the settlement agreement, and have declined to execute it, you are advised that pursuant to Section 203.7(a) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, Washington, D. C. 20216. A copy must be served upon this office and the respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 27, 1975.

Sincerely yours,

William D. Sexton

WILLIAM D. SEXTON
Acting Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-30-75

585

Mr. F. E. Williams
President, Local 1904
American Federation of Government
Employees, AFL-CIO
P. O. Box 231
Eatontown, New Jersey 07724

Re: U. S. Department of the Army
Civilian Career Management
Field Agency
Case No. 32-3934(CA)

Dear Mr. Williams:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the instant complaint has not been established in that the evidence failed to establish that the Activity's selection procedure in this matter was motivated by anti-union considerations or because an employee or employees had filed a complaint or given testimony under the Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

April 23, 1975 In reply refer to Case No. 32-3934(CA)

F. E. Williams, President
Local Union 1904
American Federation of Government
Employees, AFL-CIO
PO Box 231
Eatontown, New Jersey 07724

Re: US Department of the Army
Civilian Career Management
Field Agency

Dear Mr. Williams:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Your complaint charges the Respondent with discouraging employees from becoming union members by depriving them of promotional opportunities or by intentionally manipulating the Army-Wide Promotion Program in July, 1974 so as to deprive union members of promotional opportunities. These acts, you allege, violated Section 19(a)(2) of the Order. While one may construe the evidence provided as demonstrating an unfairness in the Promotion System, it fails to demonstrate that the Respondent was specifically motivated by anti-union considerations as required by the Order. In fact, the evidence discloses that Fort Monmouth employees were considered and were referred to the Selecting Official as "best qualified". You do not deny this, although you differ with their selection.

Your complaint further charges that the Respondent discriminated against three (3) employees at Fort Monmouth because they had either filed a complaint or given testimony at a hearing conducted pursuant to the Order. This act, you allege, violated Section 19(a)(4) of the Order. There is a question as to whether the

complaint and/or testimony occurred pursuant to the Order. However, even if it is assumed, arguendo, that such complaint and/or testimony had been pursuant to the Order, the evidence fails to demonstrate that it resulted in anti-union conduct by the Respondent directed toward the subject employees. The evidence, rather than proving bias, reflects that these individuals had been rated best qualified for other opportunities since their testimony took place and at least one of them had been honored for his work achievements.

I am, in view of the foregoing, dismissing the entire complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary of Labor for Labor-Management Relations ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D. C. 20216, not later than the close of business May 6, 1975.

Sincerely,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

Att: Service Sheet

Mr. Joe Wilson
National Vice President
National Association of Government Employees
3300 West Olive Avenue, Suite A
Burbank, California 91505

586

SEP 30 1975

Re: State of Nevada Air National Guard
Carson City, Nevada
Case No. 70-4595(CA)

Dear Mr. Wilson:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and noting the absence of any evidence that the Activity's conduct herein was based on discriminatory considerations, I find that a reasonable basis has not been established for the Section 19(a)(2) allegation contained in the complaint and, consequently, further proceedings on such allegation are unwarranted. However, with respect to the Section 19(a)(1) and (6) allegations, I find a reasonable basis for that portion of the complaint exists based on the Activity's conduct herein, in submitting a negotiated agreement to the National Guard Bureau headquarters for approval and, upon approval, subsequently distributing such agreement to unit employees, at a time when the exclusive representative was contending that an agreement had not, in fact, been consummated.

Accordingly, your request for review is granted, in part, and the instant case is hereby remanded to the Assistant Regional Director who is directed to reinstate that portion of the complaint alleging violations of 19(a)(1) and (6) and, absent settlement, to issue a notice of hearing on such allegations.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

REGIONAL OFFICE

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102

July 2, 1975

Mr. Joe Wilson
National Vice President, NAGE
3300 West Olive Avenue, Suite A
Burbank, California 91505

Re: State of Nevada Air National Guard -
NAGE R12-130
Case No. 70-4595

Dear Mr. Wilson:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In your complaint it was alleged that the Respondent Activity made arbitrary changes to a previously approved negotiated agreement and forwarded such changes to the National Guard Bureau for higher headquarters approval without negotiating such changes.

Investigation revealed that the Respondent had entered into a collective bargaining agreement with Complainant. However, Respondent expressed doubt that the agreed-to section on the wearing of uniforms during duty hours would be approved by the National Guard Bureau. After review of the agreement by the Bureau, the agreement was returned to Respondent with instructions to make certain changes regarding the wearing of uniforms to bring the agreement in line with existing law and regulations. The Respondent conferred with Complainant concerning these changes but Complainant declined to take further action on the matter. Respondent thereupon modified the agreement to conform with existing laws and regulations and submitted the proposed modifications to Complainant for its consideration. Complainant did not seek further consultation on the proposed modifications.

I am, therefore, dismissing the complaint.

In view of my disposition of this complaint, I find it unnecessary to rule on the motion to dismiss.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitition Avenue, N.W., Washington, D. C. 20210, not later than the close of business on July 15, 1975.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

9-30-75

587

Mr. Lloyd Todd
President
Public Employees Local 1110
520 S. Virgil, Suite 206
Los Angeles, California 90026

Re: Naval Support Activity
Long Beach, California
Case No. 72-5267(RO)

Dear Mr. Todd:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the instant petition.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. In reaching this determination, it was noted particularly that the request for review neither disputes the factual findings of the Assistant Regional Director nor raises any additional factors which would warrant a hearing in this matter. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant petition, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

REGIONAL OFFICE

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102

June 17, 1975

Mr. Lloyd Todd, President
Public Employees, Local 1110
520 S. Virgil, Suite 206
Los Angeles, California 90026

Re: Naval Support Activity,
Long Beach -
Public Employees, LU 1110
Case No. 72-5267

Dear Mr. Todd:

This is to inform you that further proceedings with respect to the petition in the subject matter are not warranted. On the basis of the investigation, it has been determined that the claimed unit, namely employees of the Commissioned Officers Club and the Chief Petty Officers Club, does not appear to constitute an appropriate unit.

Our investigation discloses that a substantial number of nonappropriated fund employees in the Special Services Group were not included in the petitioned for unit. It was noted that these employees are covered by the same overall supervision, and share common personnel policies and practices administered through a centralized personnel office with employees in the petitioned for unit. Further, employees of these three nonappropriated fund groups composing the Naval Support Activity share common reduction-in-force and grievance procedures and have some interchange of employees in their operations.

In similar circumstances, the Assistant Secretary has concluded that certain claimed employees did not possess a clear and identifiable community of interest separate and distinct from other unrepresented NAF employees and that to separate the claimed employees from others whom they share a community of interest would effectuate an artificial division among the employees, resulting in a fragmented unit which would not promote effective dealings and efficiency of agency operations. In this regard, see Assistant Secretary Decision No. 505, U. S. Army Air Defense Center, Nonappropriated Funds, Fort Bliss, Texas. In view of the foregoing, and since the parties have indicated they have no additional information which is relevant and material to the issues herein, it is concluded that further proceedings are not warranted at this time.

I am, therefore, dismissing the petition.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the Activity and any other party. A statement of service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on June 30, 1975.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Assistant Regional Director/LMSA

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
9-30-75

588

Mr. Edward A. Coleman
National Representative
National Association of
Government Employees
Local R4-2
310 Mimosa Road
Portsmouth, Virginia 23701

Re: Supervisor of Shipbuilding
Conversion and Repair, U.S.N.
Case No. 22-5954(CA)

Dear Mr. Coleman:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the subject complaint alleging violation of Section 19(a)(3) of the Executive Order.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, and based on his reasoning, that further proceedings in this matter are unwarranted inasmuch as a reasonable basis for the complaint had not been established. In this regard, it was noted particularly that there was no evidence that the employees allegedly involved in the solicitations on behalf of the International Federation of Professional and Technical Engineers (IFPTE) were either managerial or supervisory personnel, or that the Respondent aided or encouraged their alleged solicitations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

July 1, 1975

Mr. Edward A. Coleman
National Representative
National Association of Government
Employees, Local R4-2
310 Mimosa Road
Portsmouth, Va. 23701
(Cert. Mail No. 701660)

Re: United States Navy
Supervisor of Shipbuilding,
Conversion and Repair
Case No. 22-5954(CA)

Dear Mr. Coleman:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

For the purpose of this letter, I am assuming the following facts to be provable:

On April 4, 1975, two employees of Respondent, Morgan and Spurgeon, neither of whom is a management or supervisory employee, were observed soliciting membership from other employees for membership in a labor organization, International Federation of Professional and Technical Engineers (IFPTE). This was done during work hours. Luther Credle, a Local President of your organization, informed Mr. McGowan, Labor-Management Relations Officer of Respondent, of the activities of Morgan and Spurgeon.

On April 5, 1975, Morgan spoke to an employee soliciting his support.

On April 7, 1975, an employee told Supervisor Harry Hiles that Morgan had spent a couple of hours during duty time soliciting authorization signatures. Hiles told Morgan to leave the department.

On April 8, 1975, Credle went to McGowan and asked him to restrain Morgan and Spurgeon from soliciting during work time.

On April 9, 1975, before work time, Morgan was soliciting signature. The supervisor called Morgan into his office and spoke to him.

On April 10, 1975, Credle met with the Commanding Officer and told him that Morgan and Spurgeon were soliciting signatures and authorization cards on government time and work areas.

On April 15, 1975, Morgan was seen soliciting the signature of an employee during work hours.

On April 22, 1975, Morgan and Spurgeon were seen soliciting signatures during work time.

On April 24, 1975, Morgan was soliciting a signature from an employee on work time but not in a work area.

Morgan and Spurgeon were counseled by representatives of Respondent with respect to their activities. On March 24, 1975, a memorandum was issued to all management and supervisory personnel with respect to advising them of union solicitation guidelines; and on April 18, 1975, employees and supervisors were instructed on soliciting guidelines.

On May 6, 1975, the IFPTE filed a representation petition requesting an election among the employees in a unit represented by your organization. The evidence fairly shows that Morgan and Spurgeon were soliciting on behalf of the IFPTE. You filed a charge on April 25, 1975 and a complaint on May 29, 1975.

You alleged by the conduct described above that the Activity violated the Executive Order. However, no claim is made and no evidence is found that these employees were supervisory or managerial. Section 19(a)(3) says that, "Agency management shall not sponsor, control or otherwise assist a labor organization." It is clear that there is no evidence to indicate that the Respondent is sponsoring or controlling the IFPTE with respect to assisting a labor organization, I must consider whether the measures taken by Respondent were reasonable in the context of the organizational activities of the two employees.

Employees who are involved in a representation campaign, especially one in which an incumbent union is being challenged, often act and react in a way which transcends propriety and the work rules of the shop or employment area in which they work. To hold the employer responsible for the acts of its employees

which go outside the rules and regulations governing the employer/employee relationship, the evidence must show an egregious set of circumstances in which the employer is manifesting an open espousal for one organization by granting privileges to said organization while denying the same to another or otherwise creating a situation in which one labor organization is assisted in securing representation status. The facts described above fall short of such a situation. The evidence shows that only two employees were involved in about seven incidents; these employees were ejected from work areas when their improper solicitation was brought to the attention of supervisors; the offended employees were counseled to refrain from such activities; and employees and supervision were notified of proper solicitation methods. I find in these circumstances a lack of evidence from which to conclude that the Respondent was assisting the IFPTE.

I find, therefore, that there is no reasonable cause to believe that a violation is occurring and that a Notice of Hearing should be issued. I am, therefore, dismissing the complaint.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business July 16, 1975.

Sincerely yours,

Kenneth L. Evans

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

cc: Mr. Donald Hammer
Labor-Management Relations Specialist
Regional Office of Civilian Manpower Management
Department of the Navy
Norfolk, Va. 23511
(Cert. Mail No. 701661)

bcc: Dow E. Walker, AD/WAO
S. Jesse Reuben, OFLMR

Mr. John Helm, Staff Attorney
National Federation of Federal
Employees
1737 H Street, N.W.
Washington, D.C. 20006

SEP 30 1975

Re: Veterans Administration Hospital
Montrose, New York
Case No. 30-5096(AC)

Dear Mr. Helm:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Petition for Amendment of Recognition in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the subject petition for amendment of recognition is the appropriate vehicle to change the affiliation of the recognized exclusive representative from the United Brotherhood of Carpenters and Joiners, AFL-CIO, to the American Federation of Government Employees, AFL-CIO, and that the evidence established that the Petitioner met each of the standards for changing the affiliation of an exclusive representative as set forth in Veterans Administration Hospital, Montrose, New York, A/SLMR No. 470. In addition, it was noted that the National Federation of Federal Employees lacked standing to intervene in this matter since it offered no evidence that the proposed amendment would cover any employees it currently represents on an exclusive basis. In this regard, see Section 202.5(e) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Petition for Amendment of Recognition, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

VETERANS ADMINISTRATION HOSPITAL MONTROSE, NEW YORK Activity and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2440, AFL-CIO Petitioner	Case No. 30-6096(AC)

REPORT AND FINDINGS

ON

PETITION FOR AMENDMENT OF RECOGNITION

Upon a petition for amendment of recognition filed in accordance with Section 202.2(c) of the Regulations of the Assistant Secretary, the undersigned, after posting notice of petition, has completed his investigation and finds as follows:

Exclusive recognition was granted under Executive Order 10988 to the Montrose Employees Union Council, which consisted of the United Brotherhood of Carpenters and Joiners, Local 2440, AFL-CIO, and Local 178, Hotel, Restaurant and Bartenders International Union. In December of 1966, the Activity executed a negotiated agreement with the Carpenters covering a unit of all of the Activity's Wage Grade employees. The Petitioner proposes to amend the recognition granted the Carpenters to reflect a change in the affiliation of the recognized exclusive representative from the Carpenters to the American Federation of Government Employees, AFL-CIO.

The Petitioner had previously sought to amend the recognition in question via a petition filed on May 17, 1974 and docketed under the number 30-5553(AC). On July 31, 1974, I issued a Notice of Hearing on Amendment of Recognition on the matter, and a hearing was duly conducted. On December 30, 1974, the Assistant Secretary rendered his decision on the matter, finding that the petitioner had failed to meet the minimum standards for such a change in affiliation in order to ensure that the change accurately reflected the desires of the membership of the exclusive representative and that no question concerning representation existed. Accordingly, the Assistant Secretary dismissed the petition.

In support of its petition, the Petitioner has submitted evidence that it has met each of the standards for a change in affiliation established by the Assistant Secretary. I have examined this evidence, and conclude that Petitioner has sufficiently met each of the standards.

On March 28, 1975, the National Federation of Federal Employees, Local 1119, submitted its opposition to the proposed amendment of recognition. I have carefully considered the basis for this opposition and find that it is insufficient to bar the granting of the amendment sought.

Accordingly, I find that the name of the exclusive representative may be changed, as requested.

Having found that the recognition may be amended, the parties are hereby advised that, absent the timely filing of a request for review of the Report and Findings, the undersigned intends to cause the Area Director to issue an Amendment of Recognition ordering that the recognition in question be changed to reflect a change in affiliation of the exclusive representative from the United Brotherhood of Carpenters and Joiners, AFL-CIO, to the American Federation of Government Employees, AFL-CIO.

Pursuant to Section 202.4(i) of the Regulations of the Assistant Secretary, a party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216.

A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other party. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 12, 1975.1/

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: May 30, 1975

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

1/ As the National Federation of Federal Employees, Local 1119, has not been granted any official status in this proceeding, in my view, it cannot file a request for review of this report and findings. However, on this date, I am also issuing a dismissal of the representation petition filed by the National Federation of Federal Employees, Local 1119, for the same unit and docketed under the number 30-6109(RO). If the National Federation of Federal Employees, Local 1119, believes that the collective bargaining agreement between the Activity and the Carpenters does not bar the processing of its RO petition in that case, it is free to file a request for for review of that dismissal.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-30-75

590

Mr. Joseph R. Mazzeffi, Sr.
1604 Waveland Avenue
Chicago, Illinois 60613

Re: Veterans Administration
Regional Office,
Chicago, Illinois
Case No. 50-13020(CA)

Dear Mr. Mazzeffi:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the instant complaint alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are not warranted inasmuch as a reasonable basis for the complaint has not been established.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS
CHICAGO REGION

VETERANS ADMINISTRATION,
CHICAGO REGIONAL OFFICE,
CHICAGO, ILLINOIS,

Respondent

and Case No. 50-13020(CA)

JOSEPH R. MAZZEFFI, SR.
(An Individual),

Complainant

The Complaint in the above-captioned case was filed on March 19, 1975, in the Office of the Chicago Area Director. It alleges a violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended. The Complaint has been investigated and carefully considered. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in this case.

It is alleged that the Respondent violated Section 19(a)(1) and (6) of the Order by its failing to consider the Complainant "best qualified" in performance evaluations issued on February 28, 1974, and June 27, 1974; the February 28, 1974 evaluation resulted in the Complainant being determined not qualified for the position of "Rating Specialist (GS 12)". The announcement indicating the filling of the position of "Rating Specialist (GS 12)" was dated March 12, 1974. The Complainant further alleges that such action on the part of the Respondent was in reprisal for his using approximately 103 days of authorized sick leave, and for his questioning activity management relative to this action on August 13, 1973. Also, it is alleged that performance evaluations for promotional purposes are improperly discussed among the Respondent's promoting officials in that leave records are taken into consideration in establishing performance evaluations and affixed to the evaluations.

The Area Director has reviewed the materials supplied by the Complainant in the Report of Investigation accompanying the Complaint, and finds no information to suggest that any of the alleged reprisals against the Complainant flowed from his actual or presumed union activity. Indeed, the Complainant makes it clear that he bases no argument on such a theory. His Complaint appears clearly to be against the internal administrative procedures of the Respondent in its processing of performance evaluations;

the only motive attributed to the Respondent by the Complainant is the allegation of reprisals for the taking of authorized sick leave. Again, no reprisals for union activity are alleged or implied. 1/

Sections 203.2(a)(3) and 203.3(a)(3) of the Assistant Secretary's Regulations require that both the pre-complaint charge filed with the Respondent and the Complaint filed with the Assistant Secretary state clearly and concisely the facts constituting the alleged unfair labor practice. I find that no such facts have been presented or offered in this matter. 2/

Having considered carefully all the facts and circumstances in this case, including the charge, the Complaint and all information supplied in the accompanying Report of Investigation supplied by the Complainant, the Complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statment of service should accompany the request for review.

1/ In light of the fact that none of the activities alleged to have been committed by the Respondent fall within the scope of Section 19(a) of the Order, the Area Director, on April 16, 1975, offered the Complainant an opportunity to withdraw his Complaint. The Complainant subsequently refused.

2/ Additionally, I note that, even if the issues before us could possibly be construed as 19(a) violations of the Order, the filing of a grievance on March 11, 1974, by the Complainant in this matter would prohibit any consideration of this case on its merits, since Section 19(d) of the Order states that "issues which can be raised under a grievance procedure may . . . be raised under that procedure or the complaint procedure . . . but not under both procedures." Furthermore, the March 12, 1974 personnel announcement and February 28 and June 27, 1974 performance evaluations occurred beyond the time limitations allowed by Sections 203.2(a)(2) and 203.2(b)(3) of the Assistant Secretary's Regulations.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor Management Relations, Attention: Office of Federal Labor Management Relations, LMSA, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business July 1, 1975.

Dated at Chicago, Illinois this 18th day of June, 1975.

R. C. DeMarco, Assistant Regional Director
United States Department of Labor
Labor Management Services Administration
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

Mr. Herbert Collender, President
American Federation of Government Employees, AFL-CIO, Local 1760
P.O. Box 626
Corona Elmhurst, New York 11373

591

SEP 30 1975

Re: Department of Health, Education and Welfare
Social Security Administration
Northeastern Program Center
Flushing, New York
Case No. 30-6007(AP)

Dear Mr. Collender:

I have considered carefully your request for review seeking reversal of the Report and Findings on Grievability of the Assistant Regional Director in the above-named case.

In agreement with the Assistant Regional Director, I find that the instant grievance, involving the distribution of a handbill and its contents, pertains to matters concerning the interpretation and application of the parties' negotiated agreement and, thus, is grievable under such agreement. In reaching this conclusion, I reject the contention that Article 8, Section (a) of the agreement governs only material posted on bulletin boards. Thus, it is noted that Article 8, Section (a) expressly provides that, "The Council further agrees that their literature distributed on Program Center premises will not contain any language which will malign the character of any individual employee." (Emphasis added.) Further, in this regard, I find no indication either in Article 3, Section (b) (6) or Article 4, Section (a) of the agreement which restricts the applicability of such provisions to literature displayed on bulletin boards.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability,,is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, U.S. Department of Labor, in writing, 20 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 3515, 1515 Broadway, New York, New York 10036.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

Bureau of Retirement and Survivors Insurance
Northeast Program Center
Social Security Administration
Department of Health, Education and Welfare
Activity - Applicant

and

Local 1760
American Federation of Government Employees, AFL-CIO
Labor Organization

Case No. 30-6007

REPORT AND FINDINGS ON GRIEVABILITY

Upon application for decision on grievability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds as follows:

Local 1760, American Federation of Government Employees, AFL-CIO, hereinafter referred to as AFGE or the Respondent, is the exclusive representative of a unit of all non-supervisory employees of the Northeastern Program Center, hereinafter referred to as the Activity or the Applicant. AFGE and the Activity are parties to the Master Agreement between the National Council of Social Security Payment Center Locals and the Bureau of Retirement and Survivors Insurance of the Social Security Administration. The Agreement became effective on March 15, 1974, and is currently in effect.

On December 4, 1974, the Activity filed a written grievance with AFGE under the grievance procedure contained in the negotiated Agreement. By memorandum dated December 13, 1974, AFGE informed the Activity that it did not consider the matter to be grievable. Thereafter, on January 24, 1975, the Activity filed the instant application.

On October 30, 1974, at approximately 3:00AM, the Program Center received a bomb threat. The AFGE apparently was not satisfied with the manner in which management handled the threat, and it issued a handbill which it distributed on and about the Program Center premises on October 30, 1974. The handbill, which was printed on the union's letterhead, was entitled "Bombs and Business as Usual", and undertook to criticize particularly the conduct of Pasquale F. Caligiuri, Regional Representative. The handbill was signed by Herbert Collender, President of Local 1760, and Jim O'Leary, Vice President for Grievances.

The relevant sections of the Master Agreement, which formed the basis of the Applicant's grievance, are as follows:

> Article 8 - Section a - The Bureau agrees that bulletin board space shall be made available in designated areas of the Program Center for the display of Local literature, correspondence, notices, etc., as well as all official publications of the Council or the National Office of the American Federation of Government Employees.
>
> The Council agrees that such literature will not contain items relating to partisan political matters or propaganda against or attacks upon individuals or activities of a Program Center, the Bureau, the Social Security Administration, or the Federal Government. The Council further agrees that their literature distributed on Program Center premises will not contain any language which will malign the character of any individual employee. Any allegations of violation of this Section will be made the subject of a prompt meeting between the Local and the Program Center.
>
> Article 4 - Section a - The Council further agrees that its representatives and representatives of the Local will consistently strive to improve communications between employees and supervisors, promote true efficiency of the Program Centers by eliminating inequities and increasing the morale of employees. Such efforts will be focused on the goal of making each Program Center a better place to work.
>
> Article 3 - Section b(6) - Management officials of the Agency retain the right, in accordance with applicable laws and regulations - ...
>
> To take whatever actions may be necessary to carry out the mission of the Agency in situations of emergency.
>
> It is understood that the provisions of this Article shall not nullify or abrogate the rights of employees or the Council to grieve or appeal the exercise of the management rights set forth in this Article, subject to appropriate appeal and grievance procedures established by law, regulations, and this agreement.

I have carefully examined the documentation and evidence submitted, as

well as the applicable clauses of the Master Agreement, and conclude that the issue can best be resolved through the grievance procedure contained in Article 28 of the Agreement. In reaching this conclusion, I note that the Respondent has not submitted a response to the Application, nor has any statement of position or supporting evidence on the issues raised by the Application been furnished by the Respondent. Thus, the Applicant has advanced an unrefuted interpretation of the scope of Article 28, Section g. That Section reads, in pertinent part, as follows:

> "Program Center level disagreements over the interpretation or application of this Agreement may be submitted in writing by the Local President directly to the Director of Management or by the Director of Management directly to the Local President..."

Management, in its grievance, has alleged that the contents of the handbill and its distribution violated three specific Articles of the negotiated agreement. First, the grievance alleged a violation of Article 8 in that the handbill contained a direct attack upon the character of the Regional Representative. Second, a violation of Article 4 was charged in that by publishing the handbill, AFGE thereby lessened communications between employees and management and adversely affected the morale of the employees. Third, the grievance alleges that the AFGE violated Article 3 in that the use of the handbill as a vehicle of protest to an exercise of management rights ignored a responsibility to use grievance or appeal procedures to effect such a purpose. In its application for a decision on grievability the Activity has taken the position that the AFGE handbill constitutes the type of communication envisioned to be within the coverage of Article 8 of the Agreement, and further, that a dispute over the contents of such a communication should be considered a proper subject for a grievance. In addition, it is the Applicant's position that the cited Sections of Articles 4 and 3 govern the action by AFGE in distributing the handbill.

In my view, the language of the relevant clauses of the Agreement appear to be clear and unambiguous in their application to the facts contained in the instant dispute. Thus, Article 8 covers the broad category, "Local literature, correspondence, notices, etc.", without qualification, and I have no alternative but to conclude that the AFGE handbill in question falls within the scope of such language. Likewise, I can find nothing in the language of either Article 4 or Article 3 which could be construed to limit the applicability of either Article to specific actions or conditions. On the contrary, these two Articles, which deal with the rights of the union and management respectively, appear merely to constrain the actions of the parties to certain broadly defined goals and procedures to be used in governing the ongoing collective bargaining relationship.

Under all of the circumstances, and without passing on the merits of the Applicant's grievance, it appears that the issue of whether the contents

or the distribution of the AFGE handbill is in violation of certain provisions of the Agreement is a matter of the interpretation or application of the above cited Articles. I, therefore, conclude that since the Agreement provides a means by which such a dispute may be resolved, it will serve the purposes of the Executive Order to direct the parties to resolve the dispute through the negotiated grievance procedure contained in Article 28 of the Master Agreement.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business June 11, 1975.

In the event no appeal is taken from this ruling, pursuant to Section 205.12 of the Executive Order's Rules and Regulations, the parties will notify the undersigned in writing as to what action they have taken to comply with this decision by June 30, 1975.

If this decision is appealed to the Assistant Secretary and my decision is affirmed, the parties will notify the undersigned of what action they have taken to comply with this decision thirty (30) days from the date of the Assistant Secretary's letter advising the parties of his decision.

DATED: May 29, 1975

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-30-75

Mr. James W. Dodd
Second Vice President
National Federation of
Federal Employees
854 Rush Street
Chicago, Illinois 60611

592

Re: General Services Administration
Region 5
Chicago, Illinois
Case No. 50-13011(CA)

Dear Mr. Dodd:

This is in connection with your request for review seeking reversal of the Assistant Regional Director's finding that the subject complaint filed in the above-named case was untimely.

In agreement with the Assistant Regional Director, I find that the instant complaint is procedurally defective in that it was filed untimely. Thus, the alleged unfair labor practice occurred on July 2, 1973, more than six months prior to the date the pre-complaint charge in this matter was filed and more than nine months prior to the date the subject complaint was filed. Under these circumstances, I find that the pre-complaint charge and the complaint herein did not meet the timeliness requirements of Sections 203.2(a)(2) and 203.2(b)(3), respectively, of the Assistant Secretary's Regulations.

Accordingly, the merits of the subject case have not been considered and your request for review, seeking reversal of the Assistant Regional Director's decision dismissing the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

GENERAL SERVICES ADMINISTRATION,
REGION 5,
CHICAGO, ILLINOIS,
Respondent

and

Case No. 50-13011(CA)

LOCAL 739,
NATIONAL FEDERATION OF
FEDERAL EMPLOYEES,
Complainant

The Complaint in the above-captioned case was filed on February 12, 1975, in the Office of the Chicago Area Director. It alleges a violation of Section 19(a)(6) of Executive Order 11491, as amended. The Complaint has been investigated and carefully considered. It does not appear that further proceedings are warranted, inasmuch as the Complaint has not been timely filed pursuant to Section 203.2(a)(2) and (b)(3) of the Assistant Secretary's Regulations. This section requires that the pre-complaint charge must be filed within six (6) months of the occurrence of the alleged unfair labor practice and that a complaint filed with the Assistant Secretary be filed within nine (9) months of the occurrence of the alleged unfair labor practice or within sixty (60) days of the service of a Respondent's written final decision on the charging party, whichever is the shorter period of time.

It is alleged that the Respondent violated Section 19(a)(6) of the Order by failing to consult and confer with the exclusive representative concerning certain matters relating to the safety of the Towveyor Crew at the activity's South Pulaski Road warehouse location.

Attachments to the Complaint cite June 11, 1973, as the date of the original grievance filed against the Respondent by the labor organization. Investigation reveals that as a consequence of the filing of a grievance a meeting was held on July 2, 1973, and was attended by local union President Mr. Napoleon Bonaparte and management representatives in order to attempt to resolve the grievance. According to a letter dated July 5, 1973, from Mr. W. B. Morrison, Regional Commissioner of the Public Building Service, General Services Administration (GSA), addressed to Mr. Bonaparte, procedures were established and safety practices initiated at the July 2, 1973 meeting to reduce accident risks on the Towveyor. According to this letter, the union expressed agreement and the matter was settled. The Area Director's investigation has determined that Mr. Bonaparte is in agreement that the July 2, 1973, meeting resolved the union grievance and that the union took no additional action following this to pursue the initial safety complaint.

The Complainant, James William Dodd, Second Vice President and Safety Inspector for the labor organization, states that the above-described meeting was closed to him, even though he stated to activity management and labor organization officials that he was designated as the official representative of the Towveyor Crew and thus had an interest in the grievance proceedings. 1/

The Complainant further maintains that as a result of a letter dated September 11, 1974, which he addressed to Mr. Harold A. Jaderborg, Chief of the Building Management Division, GSA, concerning his desire to continue the processing of the June 11, 1973, grievance, management officially notified him on September 20, 1974, that Mr. Dodd personally could not confer or consult with the activity regarding the Towveyor Crew grievance. 2/

However, the September 20, 1974, letter of Respondent supplied by Mr. Dodd in his Report of Investigation attached to the Complaint makes no reference to such a mangement position. Instead, the letter states that:

1. a grievance must state the exact nature of the offense and remedial action required;
2. the letter did not follow the proper form in the grievance procedure in that it was not addressed to the proper party;
3. the charge was untimely in that it was filed after the 30-day limit on filing had lapsed.

In response to the September 20, 1974, activity letter Mr. Dodd filed a pre-complaint charge on October 29, 1974, in which he stated that the Towveyor Crew was working under hazardous conditions and thus the union grievance of June 11, 1973, had not, in fact, been resolved. Further, there is a reference to the meeting being closed to Mr. Dodd.

1/ Investigation reveals that on July 3, 1974, Towveyor Crew members E. Sarna, J. W. Thompson and E. Gray signed a letter addressed to local union President Bonaparte. The letter stated that they wished to have Dodd present to represent them, in what they considered to be their then current grievance, as it appears the members of the Towveyer Crew were not satisfied with the labor-management settlement of the grievance established at the July 2, 1973, meeting and attempted to continue the proceedings with the aid of Mr. Dodd.

2/ The time lapse between the July 2, 1973 meeting date and Mr. Dodd's September 11, 1974 letter to the activity can only be explained by Mr. Dodd's delay in his processing of this matter.

Based upon the procedural requirements relating to timeliness (appropriate citiations offered above), I find this Complaint is untimely filed in that if date the initiation of the 19(a)(6) Complaint is taken as July 2, 1973 (the date of the meeting between the local union president and activity management representatives held pursuant to the July 11, 1973 labor organization grievance) there is no doubt but that the Complaint is untimely given a Chicago Area Office filing date of February 12, 1975. Additionally, Mr. Dodd's pre-complaint charge of October 29, 1974 is also untimely relative to the July 2, 1973, meeting date. 3/ It must be emphasized that Mr. Dodd's complaint centers about his position that only his presence at a grievance procedure meeting would serve in legitimizing that procedure because of his position as safety inspector and his familiarity with Towveyer Crew circumstances. I am, however, satisfied that the local union president saw fit not to request Mr. Dodd's presence at the meeting in question. No evidence has been established to indicate the denial of activity management in this regard.

Secondly, another procedural flaw is evident in that a grievance procedure was initiated. The original grievance was filed on June 11, 1973. Accordingly, the union conferred with management on July 2, 1973, and reached a solution, thus resolving the grievance. Such resolution is confirmed by the union President Bonaparte. Section 19(d) of the Order states that "issues which can be raised under a grievance procedure may, in the descretion of the agrieved party, be raised under that procedure or the complaint procedure . . . but not under both procedures."

I am, therefore, dismissing the complaint in this matter.

Having found the Complaint to be untimely, I find it unnecessary to pass on the merits of the 19(a)(6) allegation.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

3/ If one were to fix the date of the alleged unfair labor practice as September 20, 1974, (the date of activity management's letter allegedly denying Mr. Dodd attendance at a grievance meeting representing Towveyer Crew employees) the procedural limitations relating to timeliness would still apply. However, as above noted, the September 20, 1974, letter cannot be construed as a denial.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business June 19, 1975.

Dated at Chicago, Illinois, this 6th day of June, 1975.

Stephen F. Jeroutek
Acting Assistant Regional Director
United States Department of Labor
Labor Management Services Administration
230 South Dearborn Street, Room 1033B
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
10-21-75

593

Mr. Perry Walper
Chief, Labor Relations Section
National Ocean Survey, National
Oceanic and Atmospheric Administration
U. S. Department of Commerce
Rockville, Maryland 20852

Re: National Ocean Survey, NOAA
Department of Commerce
Case No. 22-5880(AP)

Dear Mr. Walper:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-captioned case, wherein he found that the issue raised in the subject grievance was arbitrable under the terms of the parties' negotiated agreement and the provisions of Executive Order 11491, as amended.

Under all of the circumstances, I find that the instant case raises relevant questions of fact which can best be resolved on the basis of evidence adduced at a hearing. Thus, while the parties appear to agree that the subject grievance, which concerns a request for payment of quarters allowance, involves the interpretation of certain provisions of the Agency's Finance Handbook, they disagree as to whether matters involving the provisions of the Handbook are subject to the negotiated grievance and arbitration procedures. Thus, the Activity contends, contrary to the Applicant, that it did not intend to subject questions involving Agency Regulations, including those published in the Finance Handbook, to resolution through the negotiated grievance and arbitration procedures. Under these circumstances, it was concluded that the parties should be afforded the opportunity to present any evidence and arguments they may have concerning whether grievances involving Agency Regulations, including those Regulations set forth in the Finance Handbook, were intended to be resolved through the negotiated grievance and arbitration procedures. In this connection, any additional evidence and arguments should include the past practice of the parties, any special meaning attached to words and phrases in the agreement;

and any other matters concerning the relationship between the agreement in question and laws, regulations and the Order which the parties believe will aid in the resolution of the instant matter.

Accordingly, your request for review is granted and the instant case is remanded to the Assistant Regional Director for issuance of a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NATIONAL OCEAN SURVEY
NOAA, DEPARTMENT OF COMMERCE

Activity

and Case No. 22-5880(AP)

NATIONAL MARINE ENGINEERS
BENEFITIAL ASSOCIATION

Applicant

REPORT AND FINDINGS

ON

GRIEVABILITY OR ARBITRABILITY

Upon an application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

On November 4, 1974, a grievance was filed by Wilford A. Dixon, on behalf of himself and three other employees requesting quarters allowance for weekends regardless of work status when their vessel is in the shipyard. The grievance was filed pursuant to the collective bargaining agreement between the National Marine Engineers Beneficial Association (MEBA) and the National Ocean Survey, National Oceanic & Atmospheric Administration, U.S. Department of Commerce (NOAA). Section 7 of the contract defines grievances and sets up the procedure for their handling. Section 2(a) of the contract says in part:

> "In the administration of all matters covered by the Agreement, officials and employees are governed by existing or future laws, regulations of appropriate authorities..."

The grievance filed by Mr. Dixon progressed through the consideration

of the grievance committee, a part of the contract's grievance machinery. The grievance committee found,

> "It was the opinion of the majority of the committee that the intent of the agreement was not to provide allowances for the grievants while ashore in an off-duty status."

The grievance committee went on to say that it appeared from the reading of the contract that quarters' allowance could be provided for the grievants but that it had never been suggested previously by either management or union that such allowances were permitted and, in addition, the NOAA Financial Handbook, Chapter 13, Section 6(h), which was a part of the agreement between the parties, denied such payment.

On March 21, 1975, MEBA filed its application asserting that the grievance sought to be arbitrated was,

> "The grievance initially filed on November 4, 1974 seeks quarters allowances for weekends for engineer officers employed on vessels of the agency when the vessels are in shipyards during weekends and the officers in question are not actually performing work for the agency."

The Agency asserts as a defense to arbitration,

> "The grievance committee...found an express denial of the entitlement which the grievants seek based on the NOAA Finance Handbook, Chapter 13, Section 13-06, No. 2H. The present union agreement between NOS and MEBA is silent with regard to the payment of quarters allowance to personnel 'Ashore in an off-duty status' and since official NOAA/NOS policy as evidenced in the above referenced section of the NOAA Finance Handbook specifically denies such payment, we feel that payment would violate a published agency regulation in existence at the time the union agreement was approved and therefore be in violation of Section 12(a) of Executive Order 11491."

The union contends that the grievance seeks interpretation of the contract between the parties and, therefore, arbitration of the issue is mandated. The Agency argues, on the other hand, that since the agreement incorporates Agency regulations, and the NOAA Finance Handbook prohibits payment as requested by the grievance, the matter is not subject to arbitration.

The position of the Activity essentially is that the regulations of the Agency which are incorporated into the contract demonstrate that the grievance has no merit and to pay the allowances would violate Agency regulation. Since this is so, the matter is not grievable. I cannot consider, however, whether the grievance has merit, only, whether it may be arbitrated pursuant to the contract. There is no evidence that the regulations apply to the specific situation raised by the grievance. Ther is nothing in the contract nor the NOAA Finance Handbook which stipulates that the grievance in question may not be arbitrated only that it may not have merit. I conclude that the grievance is subject to the negotiated grievance procedure and may be arbitrated pursuant to the collective bargaining agreement.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Office of Federal Labor-Management Relations, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other party. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary no later than the close of business June 9, 1975.

KENNETH L. EVANS, Assistant Regional
Director for Labor-Management Services

Philadelphia Region
Labor-Management Services Administration

DATED: May 23, 1975

Attachment: Statement of Service

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-21-75

594

Mr. Peter Evans
National Representative
American Federation of Government
Employees
4347 South Hampton Road, Suite 110
Dallas, Texas 75237

Re: Defense/Air National Guard
Camp Mabry
Austin, Texas
Case No. 63-5603(CA)

Dear Mr. Evans:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. In reaching this determination it was noted particularly that the alleged unilateral change in the Activity's grievance procedure, which forms the basis for the instant complaint, occurred on March 15, 1974, and while the Complainant filed a timely pre-complaint charge on September 5, 1974, it did not file the instant complaint until April 24, 1975, more than nine months after the alleged unilateral change in the Activity's grievance procedure. Thus, the complaint did not meet the timeliness requirements of Section 203.2(b)(3) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

July 2, 1975

In reply refer to: 63-5603(CA)
Defense/Air National Guard
Camp Mabry, Austin, Texas/
Texas Air National Guard AFGE
Council of Locals

Mr. Pete Evans, National Representative
American Federation of Government Employees, AFL-CIO
4347 South Hampton Road, Suite 110
Dallas, Texas 75237

Certified Mail #212658

Dear Mr. Evans:

The above-captioned case alleging violations of Section 19(a) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant. Although you were afforded additional opportunity to submit evidence in support of the allegations, none has been received.

In this regard, You have not established that AGTEX Supplement 1 to TPP 904 Appendix H paragraph 3i constitutes a substantive change in working conditions or an established practice. It appears, rather, that this supplement is simply a restatement of policy issued as early as August 1971. In addition, it appears that appropriate consultation took place at that time with the exclusive representative, Texas Air National Guard, AFGE Council of Locals. Moreover, it appears that the complaint is untimely filed. Section 203.2(b)(3) of the Regulations of the Assistant Secretary provide that a complaint must be filed within nine months of the occurrence of the alleged unfair labor practice. While you assert that the regulatory changes were not discovered until September 5, 1974, a timely pre-complaint charge was filed dated September 11, 1974. The activity's negative response, although not expressly designated as final was issued dated September 23, 1974. Therefore any unfair labor practice complaint received by LMSA subsequent to December 15, 1974, must be considered untimely filed.

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor Management Relations, 14th & Constitution, N.W., Washington, D. C. 20216, not later than close of business July 17, 1975.

Sincerely,

Cullen P. Keough
Assistant Regional Director
for Labor-Management Services

Enclosure

cc: Major General Thomas S. Bishop
Adjutant General
State of Texas
Camp Mabry
Austin, Texas 78763

Certified Mail #212659

Mr. Oscar E. Masters, Area Director
U. S. Department of Labor
Labor-Management Services Administration
555 Griffin Square Building, Room 501
Griffin & Young Streets
Dallas, Texas 75202

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-21-75

595

Mr. John Helm
Staff Attorney
National Federation of Federal
Employees
1737 H Street, N. W.
Washington, D. C. 20006

Re: Veterans Administration Hospital
Montrose, New York
Case No. 30-6109(RO)

Dear Mr. Helm:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the petition in the subject case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. In reaching this determination, it was noted particularly that a valid negotiated agreement was in effect at the time the subject petition was filed. Moreover, the term of such agreement, which was for a two year duration, automatically renewable from year to year thereafter, was not viewed as being of an indefinite duration. Therefore, in accordance with Section 202.3(c) of the Assistant Secretary's Regulations, the subject petition was concluded to have been filed untimely.

Accordingly, and noting the absence of any evidence that the exclusive representative was defunct, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the petition, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

Suite 3515
1515 Broadway
New York, New York 10036

May 30, 1975 In reply refer to Case No. 30-6109(RO)

Keith Livermore, National Representative
National Federation of Federal Employees
PO Box 210
Garrison, New York 10524

Re: Veterans Administration Hospital
Montrose, New York

Dear Mr. Livermore:

This is to inform you that further proceedings with respect to your representation petition in the above matter are not warranted. On the basis of the Area Director's investigation of the petition, it has been determined that your petition was not timely filed in accordance with Section 202.3 of the Regulations of the Assistant Secretary. In this regard, the investigation determined that a valid collective bargaining agreement exists between Local 2440, United Brotherhood of Carpenters and Joiners, AFL-CIO, and the Veterans Administration Hospital, Montrose, New York, and that the Activity continues to process grievances and withhold dues from members' earnings pursuant to provisions in the agreement. As the agreement was automatically renewed for a one year period on February 3, 1975, it was fully in effect at the time your petition was filed. Therefore, under the provisions of Section 202.3(c) of the Regulations of the Assistant Secretary, your petition cannot be considered timely.

I am, therefore, dismissing the petition.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the Activity and any other party. A statement of such service should accompany the request for review.

Keith Livermore, National Representative
National Federation of Federal Employees Case No. 30-6109(RO)

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 12, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

Attach: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-23-75

596

Ms. Lisa Renee Strax
Staff Attorney
National Federation of Federal
Employees
1737 H Street, N. W.
Washington, D. C. 20006

Re: Headquarters, U.S. Army
Materiel Command
Case No. 22-5939(CA)

Dear Ms. Strax:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the instant complaint alleging violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter were unwarranted. Thus, I find no evidence to support the Complainant's contention that the Activity's failure to promote William J. Mitchell was either motivated by anti-union considerations or the fact that he filed a grievance and gave testimony under the Order. Also, under the circumstances herein, I find no merit to the Complainant's contention that the Activity's brief refusal to permit an employee to serve as an observer during a representation election constituted a violation of the Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

July 3, 1975

Ms. Lisa Renee Strax
Staff Attorney
National Federation of Federal Employees
1737 "H" Street, NW
Washington, D.C. 20006
(Cert. Mail No. 701663)

Re: Headquarters, U. S. Army
Materiel Command
Case No. 22-5939(CA)

Dear Ms. Strax:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The complaint alleged that Respondent violated the Order through the actions of two agents of Management, Henry Bukowski, Deputy Director for Maintenance and Fordyce Edwards, Supervisory Mechanical Engineer. Specifically, the complaint cited Bukowski and Edwards with reprisals against William J. Mitchell, President of Local 1332 because he exercised his rights under the Order and participated as an officer in the union. Furthermore, the Complainant alleged that Edwards interfered with the conduct of the election held pursuant to Section 10 of the Executive Order.

Complainant has offerred no evidence to support its allegations that either Bukowski or Edwards, separately or jointly, interferred and/or discriminated against Mitchell in violation of Executive Order 11491, as amended. Section 203.6(e) of the Rules and Regulations of the Assistant Secretary provides that the complainant shall bear the burden of proof regarding matters alleged in its complaint. I take that to mean that the complaining party has the responsibility to supply some positive or direct evidence that events have occurred or that certain facts are true. It is not sufficient to merely allege facts in the complaint or conclusions of law, and rest, asserting that a cause of action has been made out; it is not enough to submit a summary of events, including conversations, to which the signatory to the statement is not privy. While hearsay statements may be admissible in administrative investigations, there must be at least some primary or firsthand evidence which will give some basis to the hearsay statements. Evidence which is based entirely on hearsay does not fulfill a complainant's obligation of bearing the burden of proof within the meaning of the Regulations of the Assistant Secretary.

No evidence was submitted to sustain the allegation that Mr. Edwards interfered with the conduct of the representation election. Respondent asserted that Edwards did, in fact, allow an employee, Charles Peschek, to act as an official observer after he became aware, for the first time on the day of the election, that Peschek was to act as the union observer. No anti-union animus was shown.

With respect to the allegation that Bukowski and Edwards discriminated against Mitchell by denying him a promotion because of union activities or because he filed a grievance and gave testimony under the Order, no evidence was submitted by the union save one sentence by Executive Vice President, Richard Goodwin, in his charge, in which he averred that when he and Mitchell showed up at a meeting with Bukowski, the latter stated, "I thought you were here to talk about Zeliff," and the further statement, that a little less than two years before, Mitchell represented Zeliff in a grievance. No evidence, however, was introduced to show a nexus between the handling of that grievance and the denial of a promotion. I find that your organization has not met the burden of proof regarding matters alleged in the complaint.

The investigation further shows that, as a result of Mitchell's failure to receive a promotion, he filed a grievance concerning his non-selection for a higher rated job which is now pending before the U. S. Civilian Appellate Review Agency. In this regard, I find that Section 19(d) of the Executive Order controlling since the issue, which is the subject of the complaint, has heretofore been raised under a grievance procedure and, hence, may not be raised under the complaint procedure.

Accordingly, for the reasons stated above and on the grounds that a reasonable basis for the complaint has not been established, I am dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Departmen of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service

should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business July 18, 1975.

Sincerely yours,

Kenneth L. Evans

Kenneth L. Evans
Assistant Regional Director
for Labor-Management Services

cc: Mr. Philip Barbre
Chief, Headquarters
Civilian Personnel Office
U. S. Department of the Army
Army Materiel Command
5001 Eisenhower Avenue
Alexandria, Va. 22333
(Cert. Mail No. 701664)

Mr. Richard R. Goodwin
Executive Vice President
National Federation of Federal Employees
Local 1332
8604 Battailles Court
Annandale, Va. 22003

bcc: Dow E. Walker, AD/WAO
S. Jesse Reuben, OFLMR

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-23-75

597

Mr. John Helm
Staff Attorney
National Federation of Federal
Employees
1737 H Street, N. W.
Washington, D. C. 20006

Re: Department of the Navy
Naval Air Station
Lakehurst, New Jersey
Case No. 32-3859(RO)

Dear Mr. Helm:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Objections in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the objections herein are without merit and that no objectionable conduct occurred improperly affecting the results of the election in the subject case. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the objections, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Department of the Navy Naval Air Station Lakehurst, New Jersey **Activity** **and** International Association of Machinists and Aerospace Workers **Petitioner** **and** National Federation of Federal Employees, Ind. Local Union 284 **Intervenor**	CASE NO. 32-3859(RO)

REPORT AND FINDINGS ON OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved February 26, 1975, an election by secret ballot was conducted under the supervision of the Area Director, Newark, New Jersey, on March 13, 1975.

The results of the election, as set forth in the Tally of Ballots, are as follows:

Approximate number of eligible voters	407
Void ballots	0
Votes cast for NFFE, Local 284	68
Votes cast for the IAM	109
Votes cast against exclusive recognition	7
Challenged ballots	4
Valid votes counted plus challenged ballots	188

Challenged ballots are not sufficient in number to affect the results of the election.

Timely objections to procedural conduct of the election were filed on March 18, 1975 by the Intervenor. The objections are attached hereto as APPENDIX A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Director has investigated the objections.

Set forth below are: Background information concerning the election; the position of the parties; the essential facts as revealed by the investigation and my Findings and Conclusions with respect to each of the objections involved herein.

BACKGROUND INFORMATION

The Naval Air Station, Lakehurst, New Jersey (NASL) and the Naval Air Engineering Center (NAEC), Philadelphia, Pennsylvania, were involved in the U.S. Navy's Shore Realignment Program. This program relocated the NAEC from the Naval Base, Philadelphia, Pennsylvania to Lakehurst, New Jersey. Both organizations prior to the reorganization were equal and both organizations were subordinate to the Naval Air Systems Command, Washington, D.C.; however, under the reorganization NAEC was redesignated as the Host Command at Lakehurst and the Naval Air Station, formerly the Host Command at Lakehurst, was redesignated the "Supporting Activity" to all activities located at the Naval Air Station. Prior to the reorganization, the mission of NASL was both command and supportive. Subsequent to the reorganization, as noted above, its command functions were transferred to NAEC. Command functions previously held by NASL were transferred to the NAEC.

Local Union 284, NFFE, is the exclusive representative for a unit of "All non-supervisory wage board and class act employees of the Host Command at the Naval Air Station, excluding professional employees, management officials, employees engaged in federal personnel work in other than a clerical capacity, firefighters, supervisors, and guards as defined in Executive Order 11491, as amended". The Collective Bargaining Agreement was effective February 28, 1974 and expired on January 31, 1975. On November 29, 1974, the International Association of Machinists timely filed a petition seeking to represent the above unit employees. Local Union 284, NFFE, timely intervened and was certified as an Intervenor on December 13, 1974.

On January 10, 1975, a Consent Election Agreement meeting was held at the Naval Air Station, Lakehurst. All interested parties were represented, actively participated and voluntarily agreed to all of the election details. The election was scheduled for March 6, 1975.

On January 30, 1975, the Activity contacted Labor-Management Services Administration to advise that it had tentatively identified additional employees working in Philadelphia, Pennsylvania, who were assigned to the NASL and were not on the eligibility list. This was formalized by Activity's letter dated February 6, 1975. As a result, the parties were asked to meet on February 13, 1975 to discuss that issue. On February 13, 1975, the parties met to discuss the changes affecting the eligibility list and concluded by entering into a new Consent Agreement agreeing to all details. The election was scheduled for March 13, 1975.

OBJECTION NO. 1

The National Federation of Federal Employees, Local 284, alleges that a substantial number of employees were disenfranchised due to the following: 1/

(a) Between November 23, 1974, the eligibility date agreed to by the parties, and February 13, 1975, the date of the signing of the second Consent Election Agreement, upward of one hundred and fifty (150) employees of the Naval Air Engineering Center (NAEC), Philadelphia, Pennsylvania, had been transferred to the Naval Air Station Supply Department stationed in Philadelphia, Pennsylvania.

(b) Approximately one hundred eight (108) new hires subsequent to November 23, 1974 and prior to March 13, 1975 (election day) were actually transferred from NAEC.

(c) Twelve (12) employees located in the Activity's Civilian Personnel Department, although eligible voters, had not been included on the voter eligibility roster. 2/

In reference to (a) above, the Activity maintains that no transfers of employees from NAEC to NASL occurred between November 23, 1974 and February 13, 1975. In reference to (b) above, the Activity maintains that approximately 100 new employees were hired during the period in question; however, none were former NAEC employees. According to the Activity, the Standard Form 50s for all personnel actions occurring during the above periods were compared against the eligibility roster to verify the above information.

Activity concedes that six eligibles who had transferred had been inadvertently excluded from the eligibility roster. Activity contends that a Notice of Election had been posted in areas where these employees worked, each had

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1/ In its letter of objections of March 18, 1975, NFFE Local 284 states as its first objection that it had serious doubts that the petitioner had a sufficient showing-of-interest. This is not treated as an objection inasmuch as the Assistant Secretary's Regulations, Section 202.2(f) are clear as to the manner in which such a challenge to "adequacy" must be presented. The challenge must be filed with the Area Director with respect to the petitioner within ten (10) days after the initial date of posting of the notice of petition. Up to the time of the objections the NFFE never challenged the petitioner's showing-of-interest.

2/ Objection No. 1 in this report deals with, analyzes and responds to objections contained in paragraph No. 2 and No. 4 of NFFE LU 284's letter of objection.

been told by supervisory personnel that they could vote and each had advised the activity they knew they could vote in the election.

In reference to (c) above, the Activity states that the Petitioner, the International Association of Machinists, had petitioned for the unit as described in the then existent Collective Bargaining Agreement of the NFFE. By that contract all of the Civilian Personnel Department had been excluded. A review of the eligibility list disclosed that all had been listed as working in the Personnel Department. All were lined out. The Activity says that, after meetings with the parties, the parties agreed to include Personnel employees working in a purely clerical capacity. With the knowledge of all parties, these employees were placed on the voters' eligibility list prior to election day.

According to the Petitioner, which does not address itself specifically to any part of this objection, "all the parties to this election agreement received, far in advance, a copy of the 'Breakdown of Exclusions'. Agreement was reached on those Naval Air Station employees eligible to vote and those precluded from voting".

The Intervenor, other than its letter of objection, has filed no evidence in support of its objection. At no time prior to the election did it challenge the status of the employees that it is now questioning.

In order to clarify the status of the unit employees, an examination of those individuals involved in the mass transfer was conducted. This examination disclosed that on April 28, 1974, two hundred and sixty (260) employees of the Naval Air Engineering Center, throughout several sections or departments were mass transferred to the Naval Air Station, Lakehurst (NASL). Initially, these employees were assigned to NASL but on duty at Philadelphia, Pennsylvania. All but eighty-three (83) of these employees appeared as eligibles on the eligibility roster used on election day. Sixty (60) of these eighty-three (83) persons were lined off the eligibility roster because they had either severed their employment prior to election day and were ineligible to vote or they were supervisors and were also ineligible to vote. Of the remaining twenty-three employees (23), five (5) voted challenged ballots, and eighteen (18) were incorrectly lined out. The five challenged ballots referred to above were counted. In most instances those employees erroneously lined off the list represented employees who had initially declined transfer from Philadelphia to Lakehurst but had changed their minds before February 13, 1975.

An examination of Standard Form 50s for new employees hired during the period in question disclosed that none were former NAEC employees.

In summary, the evidence discloses that no mass transfer of former NAEC employees to NASL occurred during the period in question and no former NAEC employees were hired during the period in question. Evidence does disclose

that twenty four eligible employees had not been listed as eligible voters since their names had been incorrectly lined out on the eligibility roster. Petitioner's margin of victory was 41 votes, hence, the margin could not have been affected. If the 24 voters had voted and all 24 had voted for the Intervenor, the total ballots cast would have been 212 and a majority would have required 107 votes (Petitioner received 109 valid votes).

Based upon the foregoing, I conclude that the omissions to the eligibility roster could not have affected the outcome of the election.

In addition, the evidence discloses that eligible employees of the Civilian Personnel Office were listed as eligible voters. There is no evidence that any of these voters were denied the right to vote.

Accordingly, Objection No. 1 is found to have no merit.

OBJECTION NO. 2

The National Federation of Federal Employees, Local 284, alleges that one hundred and fifty (150) people cited in Objection No. 1 were not accorded their right to self-determination because of the following actions taken by the Agency:

(a) A declaration that they were ineligible to vote in the March 13, 1975 election,
(b) A failure to file a petition to assure the rights of the referenced employees, and
(c) A failure to continue to accord appropriate recognition, and failure to continue to honor an existing negotiated agreement, with respect to a unit of which the referenced employees are a part, that is, the General Schedule employees of the Naval Air Engineering Center, Philadelphia, Pennsylvania.

In response to item 2(a), Activity reiterates its response set forth in Objection No. 1; namely, "no employees were placed in NASL roles (sic) from NAEC roles (sic) after November 1974 according to our research" (sic).

In response to 2(b), the Activity states that "there were only a few employees that accreted from NAEC Supply, Public Works and Industrial Departments to NASL Public Works and Supply Departments, This was the only accretion that moved employees from one unit to another. There were not a sufficient number of employees transferred to affect the appropriateness of either unit".

Activity maintains it cannot respond to 2(c) without receiving further information.

The International Association of Machinists in answering the first part of the objection states, "at no time were the employees of any other bargaining units (such as NAEC) considered to be part of the petitioned for unit of NAS". The IAM does not address itself to the second and third parts of the objections.

Intervenor, other than its letter of objection, has furnished no additional information to support Objection No. 2.

In summary, part 2(a) is simply a restatement of Objection No. 1 which has been found to have no merit. Parts 2(b) and 2(c) set forth issues which are not objections to the conduct of the election. The Activity was under no obligation to file a petition to assure the rights of any of its employees. Part 2(c) apparently seeks to raise as an objection conduct which could form the basis for an unfair labor practice complaint. Evidence discloses that no formal complaint had been filed prior to the election and no objection to the election based upon such conduct had been raised by the Intervenor prior to the election.

Based upon the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 2 is found to have no merit.

OBJECTION NO. 3

Intervenor asserts that on February 24, 1975, two (2) of its National Representatives, William Milhorn and James McCord, approached the Activity with a request that one of the polling places, Building No. 200, should be changed because it housed the Civilian Personnel Office. NFFE felt that the location tended to discourage employees from voting. The Activity, after some hesitancy, agreed to the change if the Petitioner agreed as well. The Petitioner did not agree and the poll was not changed.

The Petitioner responded to this objection by referring to the two Consent Election Agreements signed by the parties to the election. It also noted that the location was selected by the parties because of its central location.

The Activity acknowledges the Intervenor's contact and request to change one of the polling areas but notes that no change was contemplated because all the parties to the Consent Election were not in accord with the proposed change.

There is no evidence that voters refrained from voting at Building 200 because of its proximity to the Civilian Personnel Office. There were four (4) polling sites selected by the parties because of easy access to voters and their proximity to the center of groups of voters. They are: (1) the power plant #2, (2) Philadelphia, Pa., (3) Hangar #5, and (4) Building #200. In the

power plant #2, nine (9) of eighteen (18) or 50% voted. In Philadelphia, thirty-four (34) of sixty-four (64) or 53% voted. In Hangar #5, fifteen (15) of forty-three (43) or 35% voted. In Building #200, one hundred and thirty (130) of two hundred and eight-two (282) or 46% voted. The worst turnout occurred at a poll to which no objection was raised.

Investigation discloses that the parties chose the site for its central location, as a place where the election materials could safely and readily be stored between polling times and as a location which had previously been used in an earlier election of the same unit with excellent results (Case No. 32-1783). It was also selected because it was a conference room and could easily accommodate the bulk of the voters expected in the area.

Based upon the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 3 is found to have no merit.

Having considered each of the objections singularly, I also conclude that considering them in their entirety, no improper conduct occurred which could have affected the outcome of the election.

Having found that no objectionable conduct occurred improperly affecting the results of the election, I am advising the parties that a certification on behalf of the International Association of Machinists will be issued by the Area Director, absent timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business July 23, 1975.

DATED: July 8, 1975

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

Mr. Cullen P. Keough
Assistant Regional Director, LMS
U. S. Department of Labor
Room 2200, Federal Office Building
911 Walnut Street
Kansas City, Missouri 64106

Re: U. S. Department of Army,
Pueblo Army Depot
Pueblo, Colorado
Case No. 61-2386(ARBIT)

Dear Mr. Keough:

On August 8, 1975, I sent a letter to the Civil Service Commission inquiring whether the procedural aspects of the employee's suspension involved in the grievance in the subject case were covered by a statutory appeal procedure. In its reply dated October 8, 1975, (copy enclosed) the Civil Service Commission stated that it was unable to determine with certainty whether the instant matter is appealable under a statutory appeal procedure because our file does not contain a description of the procedural question at issue or the action which constitutes the alleged violation of such procedure.

Accordingly, the matter is hereby returned to your office for additional investigation to determine the procedural question at issue and the action which constitutes the alleged violation of such procedure. Upon the completion of your investigation, please return the matter to this Office.

Sincerely,

Louis S. Wallerstein
Director

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF POLICIES AND STANDARDS
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

OCT 8 1975

Mr. Louis S. Wallerstein, Director
Labor Management Services Administration
Office of Federal Labor-Management Relations
United States Department of Labor
Washington, D.C. 20216

Dear Mr. Wallerstein:

This is in response to your inquiry of August 4, 1975, concerning the availability of a statutory appeals procedure covering the procedural aspects of employee suspensions of 30 days or less (your reference Case No. 61-2386 ARBIT).

Section 752.304 of the Civil Service Commission's regulations (5 Code of Federal Regulations) provides a right to an employee suspended for 30 days or less to appeal to the Commission the procedures followed by the agency in taking that action. The Commission does not review non-procedural issues in such appeals unless an allegation of discrimination based on grounds of race, color, religion, sex, age, partisan political reasons not required by law, marital status, or physical handicap is made or unless the suspension is imposed during the advance notice period of a removal, reduction in rank or pay, or indefinite suspension. We do consider pertinent provisions of agency regulations and of applicable negotiated agreements in addition to our own procedural requirements.

With reference to the instant case, we are not able to determine from the file you provided whether there is, in fact, a procedural question at issue. We cannot find in the material provided any description of the procedure that has, allegedly, been violated or of the action that constituted the violation. Without this information we are unable to determine with certainty whether this particular case would be appealable to the Commission under the regulation cited above. We will be glad to reconsider the matter when that information is made available.

Sincerely yours,

Arch S. Ramsay

Arch S. Ramsay
Director

THE MERIT SYSTEM—A GOOD INVESTMENT IN GOOD GOVERNMENT

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U.S. DEPARTMENT OF ARMY
PUEBLO ARMY DEPOT
PUEBLO, COLORADO Activity

and

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, AFL-CIO Applicant

Case No. 61-2386(ARBIT)

REPORT AND FINDINGS
ON
ARBITRABILITY

Upon the filing of an Application for Decision on Arbitrability in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds as follows:

National Association of Government Employees, Local R14-5 (NAGE) attained recognition at Pueblo Army Depot (Activity) on April 12, 1971, and is the current exclusive representative of employees in a unit composed of:

"All non-supervisory, non-professional employees at Pueblo Army Depot (PUAD), except for the employees excluded in Section 10, Executive Order 11491, and those units covered by exclusive recognition which are the Guard Unit; Fire Prevention and Protection Unit; Communications Center Unit; Boiler and Domestic Heating Unit; and the 5th Army Medical Unit, and Electronic Command, both of which are serviced by PUAD through servicing agreements; and all nonappropriated employees."

The current collective bargaining agreement executed by the parties became effective on April 5, 1973, and expires in April, 1975.

The Applicant (NAGE) seeks actions to determine whether or not the Activity's compliance or non-compliance with its established (installation) procedures dealing with disciplinary action is subject to a determination by the Arbitrator. Such application was filed on behalf of Ernesto A. Tafoya, who submitted a grievance under the negotiated grievance procedure, which is described in more detail as follows:

The record discloses that on January 22, 1974, Tafoya filed a formal grievance wherein he alleged that the disciplinary action (three (3) days suspension) administered to him on January 8, 1974, was not for just cause. The Union processed the grievance through the four-step grievance procedure without receiving a satisfactory answer from the Activity. At Step 4 of the grievance procedure, Colonel Willian P. Hooker, Commanding Officer, Pueblo Army Depot, reduced the three days suspension given Tafoya to a (1) day suspension. As indicated above, this action was not to the Union's satisfaction and therefore, on February 25, 1974, in accordance with Article XXII of the collective bargaining agreement, NAGE requested binding arbitration to resolve the matter. An Arbitrator, Attorney John E. Gorsuch, was selected by the parties and an arbitration hearing was scheduled for August 19, 1974. The evidence presented by the parties reveals that subsequent to the selection of Gorsuch as Arbitrator, he sent a letter to both Civilian Personnel Officer Schwartz and Carlos Herrera, President of NAGE Local R14-5, on May 29, 1974. Among other things, Gorsuch posed the following question in the second paragraph of that letter.

"I want to be certain that I have properly concluded that there is no issue being raised by any party that the preliminary steps of the grievance procedure were not followed so that there would be no question that the matter is properly before me for decision."

By letter to the Arbitrator dated June 5, 1974, signed by both Schwartz and Herrera, management and the union state:

"Please be assured that no issue is being raised by either party concerning the procedural aspects of this case. The issues concern the merits of the case at hand."

NAGE takes the position that no agreement was reached as to the procedural issue, and in support of this position, presented a notarized statement by Herrera dated August 21, 1974 (subsequent to the August 19, 1974, meeting before the Arbitrator), wherein Herrera stated:

"...It was my complete understanding that the last paragraph of the June 5, 1974 letter was addressed solely to the second paragraph [quoted above] of Mr. Gorsuch's letter of May 29, 1974...." The NAGE contends that it was Herrera's understanding that the question posed by Gorsuch was directed toward preliminary steps of the grievance procedure. The NAGE alleges, therefore, that Herrera did not agree that no issue was being raised concerning any procedural aspects of the case.

Quite briefly, the Activity contends that although the response to Gorsuch's question was broader than the question asked, the intend and understanding of the parties was clear, i.e., that no procedural issue was involved at all, only the merits of the case.

In view of my findings herein, I find it unnecessary to determine the import of the wording of the response by the parties to the question posed by the Arbitrator, or to examine, as the Activity suggests, the intent of the parties in their joint response.

On August 16, 1974, Paul J. Heyes, National Vice-President, NAGE; Carlos Herrera, and the Grievant, Tafoya, met with Activity representatives Robert Shepherd, Counsel for Activity; Schwartz, and Jack Stockton of the Civilian Personnel Office, Management Employee Relations Branch, to discuss the procedures to be followed and issues to be presented at the arbitration hearing. It appears, from evidence presented by the parties, that at this meeting, Hayes raised the question of the procedures followed by the Activity in taking disciplinary action against the Grievant. Shepherd objected, stating that the question of the procedures was not arbitrable under the agreement, especially since NAGE, as discussed hereinbefore, had previously entered into an agreement with the Activity before the Arbitrator that the question of procedures was not at issue, and that the issue would therefore necessarily be limited to the merits of the case at hand.

Evidence presented by the parties is in conflict as to what agreements, if any, were reached at the August 16, 1974, meeting and as to what transpired subsequently at the hearing before the Arbitrator on August 19, 1974. Thus, the Activity alleges that at the August 16, 1974, meeting, after discussing the procedural issues at length, a proposal was made and accepted by the parties that the procedural issue would be presented to the Arbitrator for resolution. Thereafter, at the hearing, both parties argued before the Arbitrator, who then advised them that in his opinion the procedural issue was not properly before him. NAGE representatives then announced that it would not proceed on the merits of the grievance and instead would file an Application for Decision on Arbitrability with the Assistant Secretary. The hearing was then recessed pending a decision by the Assistant Secretary.

NAGE, however, denies that any agreement was reached wherein the Union agreed to place the question of arbitrability of the procedural issue before the Arbitrator and further denies that it, NAGE, ever, in fact, placed the procedural issue before the Arbitrator for decision. NAGE stated further that Hayes advised the Arbitrator that the procedures issue had not been placed before him and the Union would not agree to place it before him.

In view of my findings herein, I find it unnecessary to determine whether any such conduct, as alleged by the Activity, actually occurred, i.e., whether or not any such agreement was ever made, and whether or not the parties actually placed the issue before the Arbitrator.

Finally, the Activity, relying on the wording of Section 13(a) of the Executive Order 1/, and Article XXI of the collective bargaining agreement, Grievance Procedure, 2/ takes the position that since a statutory appeals procedure does exist for suspensions of 30 days or less (the situation herein), the procedural issue is not arbitrable under the negotiated agreement. In support of its position, the Activity presented copies of the Federal Personnel Manual Supplement 752-1, subpart C, which sets forth the right of appeal to suspension of 30 days or less.

I have reviewed carefully this position of the Activity and the content of 5 C.F.R., Administrative Personnel, Part 752, "Adverse Actions by Agencies." Subpart C of Part 752 relates solely to "Suspensions of 30 Days or Less." Paragraphs 752.301 through 752.304 deal, respectively, with "Coverage," Procedures," Emergency Procedures" and "Appeal Rights to the Commission."

Since the authority for the provisions of Part 752 are issued under 5 U.S.C. 1302, 3301, 3302 and 7701 as well as two Executive Orders, 10577 and 11491, it is concluded that a statutory appeals procedure does exist for the resolution of alleged procedural violations as involved herein. In this regard, paragraphs 4 and 4a of Exhibit A, attached hereto, a letter dated January 4, 1974, sets forth in detail information to Tafoya as to the time requirements and procedures to follow for filing of an appeal to the Civil Service Commission regarding any alleged procedural violation.

In view of the above, and inasmuch as Section 13(a) of the Executive Order precludes utilization of the negotiated grievance procedure for matters for which a statutory appeals procedure exists, it is concluded further that the instant procedural issue is neither grievable nor arbitrable and I shall therefore deny the application. 3/

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Attention: Office of Federal Labor-Management Relations, 14th and Constitution Avenue, N.W., Washington, D.C. 20216, not later than close of business March 19, 1975.

Labor-Management Services Administration

Cullen P. Keough, Assistant Regional Director
for Labor-Management Services
Kansas City Region
2200 Federal Office Building
911 Walnut Street
Kansas City, Missouri 64106

Dated: March 6, 1975

1/ The pertinent wording of this Section is as follows: "(a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit for the consideration of grievances over the interpretation or application of the agreement. A negotiated grievance procedure may not cover any other matters, including matters for which statutory appeals procedures exist...." (Emphasis added.)

2/ Section 1.a. of this Article reads: "The purpose of this Article is to prescribe an exclusive grievance procedure for the processing of grievances concerning the interpretation and application of the Agreement. This procedure does not cover any other matters, including matters for which statutory appeals procedures exist."

3/ In reaching the conclusion that the procedural issue involved herein may not be raised under the negotiated grievance procedure, I find it unnecessary to consider the Activity's additional argument that the procedural issue was not properly raised in strict accordance with the provisions of the negotiated grievance procedure.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

10-30-75

599

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1737 H Street, N. W.
Washington, D. C. 20006

Re: United States Information Agency
Washington, D. C.
Case No. 22-5903(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the instant complaint alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that a reasonable basis for the complaint has been established. Thus, in my view, the Activity's conduct herein raises material issues of fact which can best be resolved on the basis of evidence adduced at a hearing. Accordingly, your request for review is granted and the case is remanded to the Assistant Regional Director who is directed to reinstate the complaint and, absent settlement, to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

June 30, 1975

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1737 "H" Street, NW
Washington, D.C. 20006
(Cert. Mail No. 701651)

Re: United States Information Agency
Case No. 22-5903(CA)

Dear Ms. Cooper:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The charge and complaint alleged that Respondent violated Sections 19(a)(1) and (6) of the Executive Order by refusing to accept the recommendation of the Joint Wage Council which was a body set up to determine wage rates. The investigation revealed that pursuant to contract, a Joint Wage Council was set up composed of two union members, one each from Local 1418, National Federation of Federal Employees, and Local 1447, National Federation of Federal Employees; and, three management members, one of whom will be a non-voting participant. The Chairman of the Council will alternate among the four voting members. 1/ The contract provides that the Council will make recommendations to the Chief, Domestic Service Personnel Division, concerning the timing of wage surveys; the identification of data sources and jobs to be surveyed; the selection of data collectors to conduct the survey; and the proposed wage schedule to be established by the Chief, Comestic Service Personnel Division, based on the data collected. The contract further provides that a majority vote of the Council will constitute the recommendation of the Council.

1/ Although not set out in the contract, a member of the Council is a Representative from Local 1812, American Federation of Government Employees.

You asserted that the employees are covered by the specific wage schedule determined through the Joint Wage Council. The contract, however, does not indicate that the parties have agreed to delegate such authority to the Council. The contract indicates the following for determining wage rates:

1. The Council recommends parameters for the conduct of a wage survey and a proposed wage schedule;

2. The Agency, after reviewing Council's recommendations, determines the timing and coverage, and conducts the survey;

3. The Agency, thereafter, consults with the Council before establishing the wage schedule.

As I read the contract, the Agency determines the wage schedule and not the Council. The question is not whether the Agency unilaterally altered a wage schedule but whether the Agency's change of position; i.e., to include data from WETA sources after initially agreeing to exclude such data, is evidence of bad faith negotiation. The Agency averred, without contradiction, that its change of position was prompted at least in part after consultation with the Civil Service Commission. Moreover, the evidence showed that after the wage survey was conducted, the parties discussed a wage schedule based upon various combinations of data which: (a) included WETA; (b) excluded WETA; (c) was based upon a simple weighted average; or (d) utilized a least square method of computation. 2/ And, according to the evidence you submitted, the Agency agreed to increase the pay rate for Step 3 from $9.60 to $9.72 after your organization objected to the lower rate. I conclude from these facts and find that the Agency's change in position was not done in bad faith; that consultation was held in conformance with the contract; and that Respondent did not bargain in bad faith.

In these circumstances, I find that there is no reasonable cause to believe that a violation is occurring and that a Notice of Hearing should be issued. I am, therefore, dismissing the complaint.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office

2/ I note, too, that there was no firm Council wage rate schedule because WETA was included or excluded, the recommended rate would differ depending on whether the simple weighted average or the least square method was used.

and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business July 15, 1975.

Sincerely yours,

Kenneth L. Evans

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

Mr. James Keough, Director
United States Information Agency
1776 Pennsylvania Avenue, NW
Washington, D.C. 20547
(Cert. Mail No. 701652)

Mr. Kenneth A. Fowler, Chief
Employee Management Relations Division
United States Information Agency
1776 Pennsylvania Avenue, NW
Washington, D.C. 20547
(Cert. Mail No. 701653)

bcc: Dow E. Walker, AD/WAO
S. Jesse Reuben, OFLMR

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

10-31-75

Mr. John C. Robinson
Secretary-Treasurer
Federal Employees Metal
Trades Council
P. O. Box 2195
Vallejo, California 94592

600

Re: Mare Island Naval Shipyard
Vallejo, California
Case No. 70-4715(CA)

Dear Mr. Robinson:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the instant complaint alleging violation of Section 19(a)(6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that a reasonable basis for the complaint has not been established. In reaching this determination, it was noted particularly that the evidence established that the Activity met and conferred with the Complainant's President and other representatives of the Complainant regarding hazardous traffic conditions and reached agreement prior to the Respondent's closing of California Avenue during shift changes. Moreover, there was no evidence that the Complainant's President lacked authority to enter into an agreement with the Respondent concerning the stopping of traffic during shift changes. Rather, in this regard, the evidence establishes that the Complainant's President clearly indicated that the consummation of agreements of this nature was within the scope of his authority.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

REGIONAL OFFICE

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102

July 18, 1975

Mr. John C. Robinson
Secretary/Treasurer, FEMTC
P. O. Box 2195
Vallejo, CA 94592

Re: Mare Island Naval
Shipyard - FEMTC
Case No. 70-4715

Dear Mr. Robinson:

The above-captioned case alleging a violation of Section 19(a)(6) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, it is noted that the matter of hazardous traffic conditions on California Avenue was discussed with Complainant at several monthly production meetings and that Respondent implemented certain solutions to the problem which were proposed by Complainant's Council President. When these proposed solutions proved to be inadequate, Respondent conferred with and secured agreement from Complainant's Council President to prohibit traffic on California Avenue during peak traffic periods. In view of the foregoing, and in the absence of evidence that Respondent was informed by the Council President of any limitation on his authority in these negotiations, it is concluded that Respondent discharged its duty under the Order to meet and confer with Complainant, notwithstanding the assertion that consultation should have occurred with the full Council Policy Committee rather than its President and other representatives of Complainant.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than the close of business July 31, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director for
Labor-Management Services

cc: Captain James H. Webber — Regular Mail
Shipyard Commander
Mare Island Naval Shipyard
P. O. Box 2195
Vallejo, CA 94592

Mr. Richard C. Wells — Regular Mail
Labor Relations Advisor
Department of the Navy, ROCMM
760 Market Street, Suite 836
San Francisco, CA 94102

Mr. John Connerton — Certified #919981
Labor Relations Advisor
Office of Civilian Manpower
Management
Pomponeo Plaza
Rosslyn, VA 22209

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

10-31-75

Leonard Spear, Esq.
Meranz, Katz, Spear and Wilderman
Lewis Tower Building
N.E. Corner, 15th and Locust Streets
Philadelphia, Pennsylvania 19102

601

Re: Pennsylvania Air National Guard
Case No. 20-5072(CA)

Dear Mr. Spear:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case alleging violations of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings in this matter are unwarranted inasmuch as a reasonable basis has not been established for the complaint. In this regard, it was noted that a decision to effectuate a reduction-in-force action is not a matter upon which there is an obligation under the Executive Order to meet and confer upon. See, in this regard, United States Department of the Navy, Bureau of Medicine and Surgery, Great Lakes Naval Hospital, Illinois, A/SLMR No. 289. It was noted also that assuming arguendo that the employees involved herein may have been included in the subject bargaining unit, the evidence established that the Activity met and conferred with the Complainant concerning the impact of its decision to eliminate their positions prior to the scheduled implementation of such decision.

Under all of these circumstances, and noting also the absence of any evidence that the Activity's conduct was based on discriminatory considerations, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

August 1, 1975

Mr. George R. Oleck, Chairman
Pennsylvania State Council
Association of Civilian Technicians,
Inc.
1209 New Hampshire Road
Aliquippa, Pa. 15001
(Cert. Mail No. 701710)

Re: Pennsylvania Air National Guard
Case No. 20-5072(CA)

Dear Mr. Oleck:

The above-captioned case alleging violations of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The complaint alleged that on January 28, 1975, three security guards at the Pittsburgh Air National Guard Base were given notice of separation (RIF) and such action was taken without prior consultation with the exclusive bargaining representative.

Investigation has revealed that the three employees in question, James Lucci, Timothy A. Marshall and Raymond R. Richards, are excluded from the bargaining unit by virtue of their positions as guards. They were ineligible to vote in the representation election and the duties described in their position descriptions correspond to the Executive Order's definition of guard in Section 2(d). Furthermore, no evidence has been presented by the Complainant to show how these employees are unit employees or how their proposed RIF impacted on the unit.

Thus, in my view, the Respondent did not interfere with, restrain, or coerce the Complainant or other employees in the exercise of their rights assured by the Order; nor, has the Complainant presented any evidence to show how membership in the Association of Civilian Technicians, Inc. was discouraged in connection with this incident. In addition, the Complainant has not shown how proper recognition had been denied to the exclusive representative or that the Respondent refused to consult, confer or negotiate as required by the Order.

Accordingly, for the reasons stated above, and on the grounds that a reasonable basis for the complaint has not been established, I am dismissing the complaint in its entirety.

Pursuant to Section 203.7(c) of the Rules and Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business August 18, 1975.

Sincerely,

Frank P. Willette

Frank P. Willette
Acting Assistant Regional Director
for Labor-Management Services

cc: Leonard Spear, Esquire
Meranze, Katz, Spear & Wilderman
12th Floor, Lewis Tower Building
NE Corner 15th and Locust Streets
Philadelphia, Pa. 19102
(Cert. Mail No. 701711)

Colonel Hugh S. Niles, GS, PAARNG
Personnel Officer
Department of Military Affairs
Adjutant General's Office
Commonwealth of Pennsylvania
Annville, Pa. 17003
(Cert. Mail No. 701712)

bcc: S. Jesse Reuben, Deputy Director/OFLMR

Terrence J. Martin, Acting AD/PHIAO

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

10-31-75

Leonard Spear, Esq.
Meranz, Katz, Spear and Wilderman
Lewis Tower Building
N.E. Corner, 15th and Locust Streets
Philadelphia, Pennsylvania 19102

602

Re: Pennsylvania Army National Guard
Case No. 20-5071(CA)

Dear Mr. Spear:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case alleging violations of Section 19(a)(2), (5) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings in the matter are unwarranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, it was noted that the November 27, 1974, "Clarification Letter" and the December 9, 1974, endorsement of that letter by the Respondent's Adjutant General were issued to the Activity's supervisors and not to unit employees. Moreover, the evidence was considered insufficient to establish that the Respondent's conduct herein was in derogation of its bargaining obligations under the Order.

Accordingly, and noting also the absence of any evidence that the Respondent's conduct was based on discriminatory considerations, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

July 22, 1975

Mr. George R. Oleck, Chairman
Pennsylvania State Council
Association of Civilian Technicians,
Inc.
1209 New Hampshire Avenue
Aliquippa, Pa. 15001
(Cert. Mail No. 701703)

Re: Pennsylvania National Guard
Case No. 20-5071(CA)

Dear Mr. Oleck:

The above-captioned case alleging violations of Section 19(a)(2), (5) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The complaint alleged that a letter entitled "Clarification Letter of Articles in Federal Times Concerning Recent New York A/SLMR #441 Decision" was issued by the Activity during negotiations and that this tended to discourage membership, granted privileges, and issued instructions to members of the bargaining unit thus denigrating negotiations and such action was taken without prior discussion with the exclusive representative.

Investigation has revealed that the substance of the letter in question was restatement of Section 213.2 of the Technician Personnel Manual regarding wearing of the military uniform and the Activity's interpretation of A/SLMR #441. The letter issued by the Pennsylvania National Guard was an endorsement of the November 27, 1974 letter from General Weber, Chief of the National Guard Bureau.

In my view, the Complainant has not presented any persuasive evidence to substantiate that the issuance of the letter in question undermined the exclusive representative, discouraged membership, denigrated negotiations, or interfered with the status of the exclusive representative; nor, in my view, was there any obligation on the part of the Activity to confer with the exclusive representative prior to the issuance of said letter.

Thus, the Respondent did not discourage membership in the labor organization, refuse to accord appropriate recognition, or refuse to consult, confer or negotiate as required by the Order.

Accordingly, for the reasons stated above and on the grounds that a reasonable basis for the complaint has not been established, I am dismissing the complaint in its entirety.

Pursuant to Section 203.7(c) of the Rules and Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business August 6, 1975.

Sincerely,

Kenneth L. Evans
Assistant Regional Director
for Labor-Management Services

cc: Colonel Hugh S. Niles
Department of Military Affairs
Adjutant General's Office
Commonwealth of Pennsylvania
Annville, Pa. 17003
(Cert. Mail No. 701704)

Leonard Spear, Esquire
Meranze, Katz, Spear & Wilderman
12th Floor, Lewis Tower Building
NE Corner 15th and Locust Streets
Philadelphia, Pa. 19102
(Cert. Mail No. 701705)

bcc: Robert N. Merchant, AD/PHIAO
S. Jesse Reuben, OFLMR

603

Mr. John Helm, Staff Attorney
National Federation of Federal
Employees
1737 H Street, N.W.
Washington, D. C. 20006

Re: U.S. Army Medical Department
Activity
Aberdeen Proving Ground, Maryland
Case No. 22-5759(RO)

Dear Mr. Helm:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the objection to the election in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that dismissal of the objection in this matter is warranted. In reaching this conclusion, I reject your contention that the statement in question unfairly implicated the NFFE and impaired the employees' ability to make a reasoned decision in casting their votes in the election. Rather, in agreement with the Assistant Regional Director, I find that such statement was easily recognizable as self-serving campaign propaganda and was not of a nature that would improperly impair the employees' freedom of selection of a bargaining representative.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections to Conduct of Election, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES ARMY MEDICAL DEPARTMENT ACTIVITY (MEDDAC)
ABERDEEN PROVING GROUND, MARYLAND

Activity

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 178 (NFFE) Case No. 22-5759(RO)

Petitioner

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO (IAM/AW)

Intervenor

REPORT AND FINDINGS

ON

OBJECTIONS

In accordance with the provisions of an Agreement for Consent Election approved on March 4, 1975, an election by secret ballot was conducted under the supervision of the Area Director, Washington, D.C., on March 26, 1975.

The results of the professional and nonprofessional elections, as set forth in the Tally of Ballots, are as follows:

I. Professional

Approximate number of eligible voters.....21

A. Votes cast in favor for inclusion in the nonprofessional unit..... 7
Votes cast against inclusion in the nonprofessional unit..... 9
Void ballots..... 0

B. Votes cast for NFFE, Local 178..... 2
Votes cast for IAM/AW..... 5
Votes cast against exclusive recognition..... 9
Valid votes counted.....16
Challenged ballots..... 0
Valid votes counted plus challenged ballots.....16

II. Nonprofessional

Approximate number of eligible voters.....100

Void ballots..... 0
Votes cast for NFFE, Local 178..... 15
Votes cast for IAM/AW..... 28
Votes cast against exclusive recognition..... 25
Valid votes counted..... 68
Challenged ballots..... 0
Valid votes counted plus challenged ballots..... 68

Challenged ballots were not sufficient in number to affect the results of the election.

Timely objections to conduct improperly affecting the results of the election were filed on March 31, 1975 by the petitioner. The objections are attached hereto as Appendix A. The petitioner also filed a supplemental letter dated April 2, 1975 (Appendix B).

In accordance with Section 202.20(c) of the regulations of the Assistant Secretary, the Area Director has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to the objections involved herein:

OBJECTION

The Petitioner alleged that a letter to GS employees at the Kirk Army Hospital (part of the Medical Department employing most of the eligible employees), "dated March 20, 1975 (Appendix C), was distributed by the IAM/AW on March 24, 1975 at or shortly before noon. Paragraph 2 of said letter refers to ineffective representation by 'Another Government Union', strongly implying that the referenced union was the NFFE, the only other union on the ballot in this case."

The NFFE contended that it did not have opportunity to make a rebuttal to the "inaccurate and unfair" implications of the letter, "as it was circulated at noon two days before the representation election...." "This constitutes a violation of the '48 hour rule' regarding rebuttal to campaign literature." The NFFE contended further that the "implications of the letter seriously abridged the employees' ability to make a reasonable decision in casting their votes in the referenced election."

In their supplemental letter dated April 2, 1975, the petitioner noted the following:

(1) "NFFE was not the prior representative of the employees (referred to as 'Another Government Union' in the IAM letter), although the IAM letter implies that this was the case."

(2) "The actual prior representative was apparently AFGE, Local 1779, which held Formal Recognition for all employees under the APG Command under Executive Order 10988."

As a result, the petitioner contended that the signatories of the IAM/AW campaign literature led the employees to believe that the prior representative of whose representation they complain was the NFFE. This "implication is unfair and inaccurate, as the actual prior representative (until 1970) was AFGE, which was not a party to the election" in the above-captioned case.

Responses to the objections were filed with the Area Director by both the Activity and the IAM/AW. Both parties stated that although they had received the letters citing the objection, neither had received a copy of the campaign literature upon which the NFFE based its objection. The Activity in its letter dated April 14, 1975 also stated that it could not give a position or offer any information with respect to the objection as no staff member from the Civilian Personnel Division nor the Executive Officer or Commander from MEDDAC had seen the literature.

The Intervenor, IAM/AW, filed its position with the Area Director dated April 14, 1975. While also noting that it was not served with supporting evidence, namely the campaign literature, the IAM/AW stated that the literature was truthful, that the signatories to the letter had been members of another "Federal Employees Union" and that they were receiving better service since belonging to the IAM/AW. Furthermore, the Intervenor contended that the literature was handed out three days prior to the election, that the petitioner had ample opportunity to respond and that the letter did not abridge the employees' ability to make a reasonable decision in casting their votes. 1/

I find that the objectionable phrase "Another Government Union"in the context in which it was used was not a gross misrepresentation of fact nor a substantial departure from the truth. The letter neither implied nor referred to the NFFE as being the union which hadn't provided representation to employees in years past. In any event, the letter was easily recognizable a self-serving propaganda and not of the nature which would improperly impair the employees' right to a full and complete freedom of choice in selecting a bargaining representative. 2/

1/ I find it unnecessary to determine whether the letter dated March 20, 1975 was distributed two or three days prior to the election.

2/ Hollywood Ceramics Company, 140 NLRB 221, 51 LRRM 1600.

I conclude that no improper conduct occurred affecting the results of the election. Accordingly, the objection is found to have no merit. 3/

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business May 27, 1975.

Dated: May 12, 1975

Kenneth L Evans

KENNETH L. EVANS
Assistant Regional Director
for Labor-Management Services

3/ I make no finding on the failure of Petitioner to include in the formal objections served on the parties, a copy of the specific letter which served as the basis of the objections. I note, however, that the date of the document in question and the individuals signing it were included in the documents served.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON D.C. 20210

10-23-75

604

Ms. Lisa Renee Strax
Legal Department
National Federation of Federal
Employees
1737 H Street, N. W.
Washington, D. C. 20006

Re: Headquarters, U. S. Army Materiel
Command
U. S. Department of the Army
Case No. 22-5900(CA)

Dear Ms. Strax:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-mentioned case.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Thus, in my view, the Complainant herein did not present sufficient evidence to establish a reasonable basis for its allegation that Zohrab Tashjian's position was eliminated for discriminatory reasons. In this connection, see Section 203.6(e) of the Assistant Secretary's Regulations which provides, in relevant part, that, "The Complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in the complaint..." Further, it was noted that the allegations with respect to denial of representation and refusal to consult regarding a reorganization were procedurally defective in that these allegations were not included in the pre-complaint charge. In this regard, see Section 203.2(b) of the Assistant Secretary's Regulations which provides, in relevant part, that a charging party may file a complaint "limited to the matters raised in the charge."

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

June 13, 1975

Mr. Richard R. Goodwin
Executive Vice President
Local 1332, NFFE
8604 Battailles Court
Annandale, Va. 22003
(Cert. Mail No. 734221)

Re: Headquarters, U.S. Army Material
Command, U.S. Department of the Army
Case No. 22-5900(CA)

Dear Mr. Goodwin:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

On January 7, 1975, you filed a charge with the Agency alleging that Mr. Zohrab Tashjian had been discriminated against because he had lodged a complaint against Colonel Jerome Aaron on December 23, 1974. Thereafter, you filed a complaint against the Activity on April 9, 1975, averring that Mr. Tashjian was discriminated against because he filed a grievance against Colonel Aaron, that the Activity denied Mr. Tashjian the right to be represented in a grievance and that the Activity reorganized the Command without conferring or negotiating with the union, and in the process deliberately abolished Mr. Tashjian's position. Sections 203.2(a) and (b) of the Rules and Regulations of the Assistant Secretary provide that a charge must be filed alleging the unfair labor practice under Section 19 and that the complaint filed thereafter must be limited to the matters raised in the charge.

The allegations with respect to the denial of representation and the alleged failure to consult regarding the reorganization will not be considered by me and I am, therefore, dismissing these allegations of the complaint. I shall consider only the allegation that Mr. Tashjian was discriminated against.

The investigation revealed that Mr. Tashjian had applied for another position within the Agency and pursuant to regulations, Colonel Aaron, his supervisor, prepared a performance evaluation on November 20, 1974. Mr. Tashjian returned the appraisal a month later requesting that certain remarks and comments appearing on the appraisal be withdrawn or amended. Thereafter, Colonel Aaron set up a meeting for December 24, 1975 with Mr. Tashjian to discuss the appraisal. Initially, your presence at the counselling session was at issue but you remained and participated completely thereafter. At the conclusion, Colonel Aaron amended the written portion of his appraisal. There was no evidence that this was a grievance meeting.

You alleged that the meeting was called to discuss a grievance Mr. Tashj.. had filed and inferred that it had been called at the behest of the union. You offered no evidence to sustain either of these allegations. The evidence shows that in early December 1974, for budgetary reasons, higher headquarters of the Activity directed that one of two civilian jobs in the office of Colonel Aaron be abolished. The two positions were Physical Science Administrator and Secretary. On January 3, 1975, Colonel Aaron recommended the abolishment of the Physical Science Administrator position on the basis that he and other officers in his department could assume the duties of the position. No evidence of anti-union animus by Colonel Aaron or the Activity has been shown. Colonel Gould chose to retain his secretary and distribute Mr. Tashjian's duties among his remaining staff. The investigation has failed to reveal any nexus between the counselling session and the decision to abolish Mr. Tashjian's job.

I find, therefore, that there is no reasonable cause to show that a violation is occurring and that a Notice of Hearing should issue. I am, therefore, dismissing the complaint.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 30, 1975.

Sincerely,

Kenneth L. Evans

KENNETH L. EVANS
Assistant Regional Director
for Labor Management Relations

Attach.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-6-75

Ms. JoAnne L. Krus
National Association of Government
Employees, Local R7-23
P. O. Box 515
Scott Air Force Base, Illinois 62225

605

Re: Department of Defense
Scott Air Force Base
Belleville, Illinois
Case No. 50-13019(GR)

Dear Ms. Krus:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability.

Under the particular circumstances of this case, I find, contrary to the Acting Assistant Regional Director, that the grievance in the instant case is grievable under the parties' negotiated agreement. In reaching this determination it was noted that the applicable negotiated agreement in this case is the negotiated agreement between the Activity and the NAGE Locals R7-27 and R7-27-0. In my view, under the circumstances herein, the National Association of Government Employee's failure to allege specifically in its grievance that the conduct in question was violative of Article XX, Section 12, of the parties' negotiated agreement did not render the grievance, non-grievable. Thus, it was noted that although the initial grievance did not allege a specific violation of Article XX, Section 12, the wording of such grievance was broad enough and sufficiently clear to encompass such provision. Further, in this connection, it was noted that Article XIX, which contains the negotiated grievance procedure, does not require that grievants cite the specific agreement articles involved in a grievance. Thus, based on the foregoing, and noting particularly that Article XX, Section 12, of the parties' negotiated agreement involves the subject of "administrative excusals," I find that the unresolved issues presented in the subject case concern matters involving the interpretation and application of the terms of the agreement between the parties, and that such matters should be resolved in accordance with the negotiated grievance and arbitration procedures contained in the agreement. Accordingly, your request for review seeking to set aside the Assistant Regional Director's Report and Findings on Grievability, is granted.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations the parties shall notify the Assistant Regional Director for Labor-Management Services, Labor-Management Services Administration, United States Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 1033B Federal Office Building, 230 South Dearborn Street, Chicago, Illinois 60604.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE AIR FORCE,
SCOTT AIR FORCE BASE, ILLINOIS,

Agency and Activity

and

Case No. 50-13019 (GR)

LOCAL R7-23, NATIONAL
ASSOCIATION OF GOVERNMENT EMPLOYEES,

Applicant

REPORT AND FINDINGS ON GRIEVABILITY

On March 19, 1975, Local R7-23, National Association of Government Employees (NAGE), the certified (and recognized) representative of several units of employees in the Scott Air Force Base, Illinois, 1/ filed an amended Application for Decision on Grievability. The negotiated agreement between the parties is the Labor-Management Agreement Between Local R7-23, National Association of Government Employees

1/ Local R7-23 presently represents Scott Air Force Base, Illinois, units comprising all non-supervisory employees of the Defense Commercial Communications Office (DECCO), Defense Communications Agency (DCA); all non-supervisory telephone operators; all non-supervisory Air Force General Schedule employees and all non-supervisory Wage Grade employees (except meat cutter employees)serviced by the Central Civilian Personnel Office, Scott Air Force Base, Illinois. Previously the DECCO, DCA unit was represented by NAGE Local R7-69; the telephone operators by NAGE Local R7-27-0; and the General Schedule employees by NAGE Local R7-27. NAGE Local R7-23 was recognized as the exclusive representative under the terms of Executive Order 10988 for a unit of Wage Grade employees and has consistently represented this unit. In Amendments of Certification, dated June 21, 1974, the Chicago Area Director ordered that the numerical designations of NAGE Locals R7-69, R7-27-0 and R7-27 be changed to that of NAGE Local R7-23 since the units represented by these various locals were merged into the single NAGE Local R7-23 on February 18, 1974 (See Case Nos. 50-11108 (AC), 50-11109 (AC) and 50-11110 (AC)).

and Scott Air Force Base, Illinois, which remains in force and effect for three years from the effective date of January 3, 1973. 2/

The record shows that on December 31, 1974, Activity management released certain categories of civilian personnel for various portions of the day without charge against annual leave, while other categories of employees were released but charged annual leave. In a letter dated January 10, 1975, a union grievance was filed in accordance with Article 19, Section 12 of the agreement, charging the Activity with violation of Article 4, Section 1 of the agreement in that administrative excusal was allegedly granted employees on a discriminatory basis.

The Activity responded, taking the position that the administration of leave is a management responsibility in accordance with Civil Service regulations and that there exists no appropriate relationship between the alleged improper granting of annual leave and the contract provisions allegedly violated. Rather, the Activity maintains that Article 4, Section 1 of the agreement is essentially a restatement of Section 12(a) of Executive Order 11491, as amended, and is a matter for mandatory inclusion in all labor contracts subject to the Order.

I find the Applicant's contention that the subject grievance meets the criterion for processing under the negotiated grievance procedure to be without merit. Article 4, Section 1 of the parties' agreement, entitled "Basic provisions of agreements", is essentially a paraphrase of Section 12(a) of the Order, and refers to requirements necessary in agreements negotiated between an agency and a labor organization. Nothing in Article 4, Section 1 of the agreement can be found to support the Applicant's contention that Activity management's alleged granting of administrative leave on a discriminatory basis is a matter grievable under the parties' negotiated agreement. Further, Article 20,

2/ The agreements covering NAGE Locals R7-27, R7-27-O and R7-69 were additionally submitted by the Applicant with its Application. Because of the issuance of Amendments of Certification discussed in the previous footnote, I take the agreement between Local R7-23 and the Activity to be the one relevant to these proceedings, and I note the Applicant's January 10, 1975 initial grievance letter invoking certain portions of the agreement, to be signed by JoAnne L. Krus, whose title is listed as "President, Local R7-23." However, I note that the several agreements are substantially the same relative to the pertinent language concerning the Applicant's rationale for determining the matter before me.

Section 12 3/ of the agreement contains only a description concerning the procedures and timetable for submission of employee grievances and makes no reference to what subject matters are appropriate for submission to the grievance procedure.

There is no language relating to the matter of the Activity's granting of leave in the portions of the agreement invoked by the Applicant, and no other portion(s) appear to be applicable; I find therefore that the matter of Activity management's granting of administrative leave is not a matter that may be raised under the parties' negotiated agreement.

Pursuant to Section 205.6(b) and 202.6(d) of the Regulations of the Assistant Secretary, any party aggrieved by this action may obtain a review of this decision by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding, and a statement of service filed with the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the Assistant Secretary of Labor for Labor Management Relations, Attention: Office of Federal Labor Management Relations, LMSA, United States Department of Labor, 200 Constitution Avenue, N. W. 20216, not later than the close of business July 22, 1975.

Any party aggrieved by this action who does not wish to file a request for review ". . . may file a complaint alleging an unfair labor practice under Section 19 of the Order which is based on the same factual situation which gave rise to the grievance covered by the application" in accordance with Section 205.13 of the Regulations of the Assistant Secretary.

Dated at Chicago, Illinois, this 7th day of July, 1975.

Paul A. Barry

Paul A. Barry, Acting Assistant Regional Director
United States Department of Labor
Labor Management Services Administration
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

3/ The Applicant refers in its January 10, 1975 letter to its filing of a grievance in accordance with Article 19, Section 12 of the Agreemen however, this Article in the agreement under consideration is entitle "Special Job and Conditions Premium Pay" and is clearly not applicable (this Article contains no Section 12), whereas the following Article (20), "Negotiated Grievance Procedure," is clearly applicable, Section 12 referring to Union Grievances. Therefore, I will take it that the Applicant has erred in its citation of Article 19, Section 1 of the agreement.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-25-75

Mr. James Rosa
Staff Counsel
American Federation of Government Employees, AFL-CIO
1325 Massachusetts Avenue, N. W.
Washington, D. C. 20005

606

Re: U. S. Department of State
Agency for International Development
Case No. 22-5853(CA)

Dear Mr. Rosa:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case.

Under all of the circumstances, I find that a reasonable basis exists for the instant complaint insofar as it alleges that the Respondent violated Section 19(a)(1) and (6) of Executive Order 11491, as amended, by its failure to furnish the Complainant with the Wild Report, the Thomas Report, and certain documents concerning "surplus skills." Thus, in my view, a reasonable basis was established for the allegation that such documents were necessary and relevant to enable the Complainant to perform its bargaining obligations under the Order. I further find, in agreement with the Assistant Regional Director, that a reasonable basis was not established for the instant complaint insofar as it alleges that Respondent violated the Order by its failure to furnish the Complainant with certain documents in connection with the transfer of Daisy Johnson. Thus, in my view, the Complainant's request in this regard was not sufficiently specific and the evidence was insufficient to establish that the information sought was necessary and relevant.

Accordingly, your request for review is granted, in part, and the case is hereby remanded to the Assistant Regional Director, who is directed to reinstate the complaint insofar as it alleges that the Respondent violated the Order by its failure to furnish the Complainant with the Wild Report, the Thomas Report and certain documents pertaining to "surplus skills," and, absent settlement, to issue a notice of hearing.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
1412) GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

May 21, 1975

James Rosa, Staff Counsel
American Federation of Government Employees, AFL-CIO
1325 Massachusetts Avenue, N.W.
Washington, D.C. 20005
(Cert. Mail No. 734180)

Re: Agency for International Development, Department of State
File No. 22-5853(CA)

Dear Mr. Rosa:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted since a reasonable basis for the complaint has not been established.

The complaint alleged essentially that the Agency for International Development violated Sections 19(a)(1) and (6) of Executive Order 11491, as amended, by failing to provide the union with necessary documentation so that the union could fulfill its responsibility in representing unit employees. The investigation revealed that on or about November 20 and 21, 1974, the union and Respondent met to discuss a resolution of a prior unfair labor practice charge for alleged Agency failure to consult on a proposed reduction in force (RIF). You requested at the time the following documents: a Wild report, a Thomas report, a Foreign Service Skills Review report and written answers to certain questions you presented to the Agency. 1/ The Agency refused to supply you with the Wild and Thomas reports and asserted that there was no such document as the Foreign Service Skills Review.2/

1/ The complaint you filed, however, failed to allege as a violation the failure to receive written answers to questions presented to the Agency. I shall, therefore, not consider the allegation.
2/ You presented no evidence to show that there is such a report.

Thereafter, you filed a charge which, in addition to alleging failure to supply the Wild, Thomas and Foreign Service Skills Review reports, asserted that the Agency had also refused to supply you with documents which purported to (1) establish that a position held by a Ms. Daisy Johnson would be abolished; (2) support the Agency's offer to her for a lateral transfer to another position; and, (3) that her position was no longer considered immune from abolishment.

Respondent asserts that it need not supply the Wild and Thomas reports, that there is no Foreign Service Skills Review report and that there is no documentation with respect to Ms. Johnson's employment status. 3/

The Wild and Thomas reports were undertaken by the Agency as a result of a Congressional concern with agency overstaffing, to project program management's prospective manpower requirements and to identify staffing problems. The Agency undertook a RIF action after studying the reports. Evidence was introduced that the latter was discussed with your organization on several occasions.

The investigation further revealed that with respect to Ms. Johnson your organization was informed that Ms. Johnson was advised by her supervisor that her job might be abolished and that she was asked if she was interested in being reassigned to another position since it was possible she might lose her incumbent one because of the impending RIF.

I find, in assessing the available evidence, that the Wild and Thomas reports related to a decision by the Agency to implement a RIF; that the reason for the decision to RIF need not be articulated to your organization; that all the Executive Order and the Decisions of the Assistant Secretary dictate is that impact and implementation or procedures be the subject of negotiations with the union. There is no allegation and you have supplied no evidence to indicate a violation by a refusal to discuss impact and related problems. No evidence has been introduced, and the indication is to the contrary, that there is such a document as the Foreign Service Skills Review. I find, therefore, that this allegation must also fall.

3/ You submitted no evidence with respect to any statements made by anyone to Ms. Daisy Johnson concerning her employment status or that there was, in fact, such documentation.

With respect to the Ms. Daisy Johnson incident, I find that there are no documents existing which you allege were not furnished to your organization. All the available evidence shows is that there was a conversation with Ms. Johnson concerning her employment status and such information has been given to you and discussed with your organization.

I find in conclusion, therefore, that there is no reasonable basis for the issuance of a Notice of Hearing based upon the refusal of the Activity to supply documents as described above. I am therefore dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 5, 1975.

Sincerely,

Kenneth L Evans

KENNETH L. EVANS
Assistant Regional Director
for Labor-Management Relations

cc: Ms. Pauline Johnson
Attorney Advisor
Department of State
Agency for International Development
Washington, D.C.
(Cert. Mail No.734181)

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

11-25-75

607

Mr. Ronald A. Gunton
Chairman, Executive Committee
National Federation of Federal
Employees, Local 491
P. O. Box 272
Bath, New York 14840

Re: Veterans Administration Center
Bath, New York
Case No. 35-3551(CA)

Dear Mr. Gunton:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-mentioned case.

In agreement with the Acting Assistant Regional Director, and based on his reasoning, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Thus, I find that the Respondent was under no obligation to meet and confer concerning the establishment and filling of a supervisory position. Moreover, with regard to any dispute concerning the supervisory status of the employee occupying such position, I find that such a matter is appropriately raised through the filing of a petition for clarification of unit rather than under the unfair labor practice procedures.

Accordingly, and noting the absence of any evidence of a failure to investigate this matter properly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

August 22, 1975

In reply refer to: Case No. 35-3551 (CA)

Mr. Ronald A. Gunton, President
Local 491, NFFE, Ind.
P. O. Box 272
Bath, New York 14840

Re: Veterans' Administration Center
Bath, New York

Dear Mr. Gunton:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The complaint filed on May 14, 1975 alleges Respondent violated Section 19(a)(6) of the Order by establishing a new supervisory position in the Psychology Service without affording the complainant an opportunity to meet and confer and/or negotiate on the establishment of the position. Complainant's basic contention is that the exclusive representative has a right to know "managements structures for purposes of labor relations" and hence should have received adequate notice of management's decision to establish an alleged new first line supervisory position.

According to Respondent, the supervisory structure of the Psychology service is unchanged; new employees were assigned to existing positions without change in organizational structure. In addition, Respondent contends that pursuant to Sections 11(b) and 12(b)(2) and (5) of the Order, it is not obligated to meet and confer and/or negotiate concerning supervisory positions.

The primary issue involved is whether or not the position involved herein is a supervisory position. An examination of the evidence submitted discloses that the parties do not dispute the fact that the individual occupying the disputed supervisory position is in fact a supervisor. Accordingly, I find that the position is excluded from the exclusive unit, and as such, Respondent is under no obligation to meet and confer and/or negotiate concerning the position.

I am therefore dismissing the complaint.

As previously stated by the Assistant Secretary in a similar case filed by Complainant, a dispute concerning the supervisory status of a position should be resolved through the processing of a petition for clarification of unit rather than under the unfair labor practice procedure.1/

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U. S. Dept. of Labor, Washington, D. C. 20216, not later than the close of business September 8.

Sincerely,

Joseph D. Breitbart
Acting Assistant Regional Director
New York Region

1/ Veterans Administration Center, Bath, New York, Case 35-3253 (CA)

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
11-25-75

Mr. Louis Smigel
Regional Counsel
Community Services Administration 608
Region II
26 Federal Plaza
New York, New York 10007

Re: Community Services Administration
Region II, New York
Case No. 30-6074(AP)

Dear Mr. Smigel:

I have considered carefully your request for review seeking reversal of part of the Assistant Regional Director's Report and Findings on Arbitrability in the above-named case.

In your request for review, you contend that the Assistant Regional Director erred in finding arbitrable the issue concerning whether the grievant is entitled to a promotion as a result of an accretion of additional duties to her position. It is your position that such a matter may be raised before the Civil Service Commission under a statutory appeal procedure and, thus, cannot be raised under the negotiated procedure.

Under all the circumstances, I find that the issue concerning whether the grievant is entitled to a promotion on the basis of an accretion of additional duties is not arbitrable under the parties' negotiated procedure. Thus, in my view, the grievant's claim that she is entitled to a promotion because of the accretion of additional duties to her position involves a classification matter which does not differ materially from her further claim that her position should be reclassified, which the Assistant Regional Director found to be covered by a statutory appeal procedure. In both instances the grievant is seeking a higher classification for the duties she is performing currently, which duties the Activity contends do not warrant such higher classification. I therefore, conclude that the grievant's claim is appealable to the Civil Service Commission under the statutory appeal procedure provided for classification matters and, consequently, may not be raised under the parties' negotiated grievance and arbitration procedure.

Accordingly, the request for review is granted and the Assistant Regional Director's finding noted above is reversed.

Whereas neither party sought review of certain other aspects of the Assistant Regional Director's Report and Findings on Arbitrability, pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Relations, Labor Management Services, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply with such aspects of the Assistant Regional Director's Report and Findings. The Assistant Regional Director's address is Room 3515, 1515 Broadway, New York, New York 10036.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Community Services Administration
Region II
New York, New York

Activity - Applicant

and

Local 3056
OEO Employees Union
American Federation of Government
Employees, AFL-CIO

Labor Organization

CASE NO. 30-6074(AP)

REPORT AND FINDINGS ON ARBITRABILITY

Upon application for decision on arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds as follows:

Local 3056, American Federation of Government Employees, AFL-CIO, hereinafter referred to as the Union or the Respondent, is the exclusive representative of a unit of all non-supervisory employees of Region II of the Community Services Administration (formerly the Office of Economic Opportunity), hereinafter referred to as the Activity or the Applicant. The parties to this proceeding are also parties to the National Agreement between the Office of Economic Opportunity and the AFGE for the National Council of OEO Locals, which became effective on March 31, 1972, and remains in effect at present.

This case involves the grievance of Cynthia Lloyd, an employee of the Applicant. The following facts about which the parties are not in dispute, form the basis of the grievance, and are pertinent to the instant application.

Lloyd began working as a Clerk-Typist, GS-322-05, in the Public Affairs/Congressional Relations Section of the Activity in June 1973. In August 1973, she was made an Administrative Assistant, GS-301-05, while continuing to work in the same section. In September 1973, Lloyd began receiving assignments related to the release of grants to the various community organizations for which the Activity provides financial support. These assignments were to be carried out under the supervision of the Activity's Public Relations Assistant, an employee who held grade GS-11. On or about November 1973, the Public Relations Assistant was detailed to another agency, and the Public Affairs/Congressional Relations Section was abolished. In December 1973, Lloyd was assigned to the Office of the Regional Counsel, where she was assigned new duties, but also apparently continued to handle the grants

function, and also retained her title, Administrative Assistant, GS-301-05. The duties which Lloyd was required to perform in connection with the grants program form the basis of her grievance.

During the period January 1974 through November 1974, Lloyd attempted by various means to obtain some form of official acknowledgement, and a higher grade, for the work she was performing relative to the grants. These efforts were unsuccessful, and on December 2, 1974, James R. Pagett, President of Local 3056, on behalf of Lloyd, filed a grievance in accordance with Article 16, Section 5 of the Agreement by requesting a meeting with Lloyd's immediate supervisor, Louis Smigel, Regional Counsel, to discuss six (6) alleged violations of the Agreement.

The relevant sections of the National Agreement, which form the bases of Lloyd's grievance, are as follows:1/

> Article 11 - Section 8 - The employer and the Union agree that the principle of equal pay for substantially equal work will be applied to all position classifications and actions.
>
> Article 11 - Section 14 - Except for brief periods, employees should not be detailed to perform work of a higher grade unless there are compelling reasons for doing so. Normally, the employee should be given a temporary promotion instead.
>
> Article 11 - Section 15 - Any employee detailed to another position shall be given a job description or functional statement, if such assignment is for thirty days or more... For details to higher positions of more than five consecutive days but less than thirty days, the

1/ Although the grievance originally alleged a violation of Article 11, Section 1, in that Lloyd had not been provided with a copy of her position description, the submissions of the parties disclose that the position description was in fact furnished to the Grievant on January 10, 1975. Accordingly, I find it unnecessary to decide the arbitrability of that portion of the grievance.

> supervisor shall provide the employee with a memorandum for his Official Personnel Folder.
>
> Article 10 - Section 4 - On-going career development for the individual employee shall be accomplished through establishment of an individual plan at the time of the performance evaluation.
>
> Article 12 - Section 1(b),(d),(e) - The objective of this Article is to assure that EOD is staffed by the best-qualified candidates available and to assure that employees have an opportunity to develop and advance to their full potential according to their capabilities. To this end this Article is designed: ...
> b. To give employees an opportunity to receive fair and appropriate consideration for higher level jobs;...
> d. To provide an incentive for employees to improve their performance and develop their skills, knowledge, and abilities;
> e. To provide attractive career opportunities for employees; ...
>
> Article 12 - Section 4(b)(7) - An employee whose position is reconstituted in a higher grade owing to the accretion of additional duties and responsibilities may be given a career promotion provided that the accretion was not the result of planned management action ... When an additional position is not a clear successor to the former position, a career promotion may be made.

Pursuant to the procedures prescribed in Article 16, meetings were held between the parties on December 4 and 6, 1974, for the oral presentation of the grievance. Thereafter, having failed to resolve the grievance to Lloyd's satisfaction, Pagett forwarded the grievance on December 13, 1974 to Angel Rivera, Regional Director of the Activity. Although Article 16, Section 7, specifies that the Regional Director may meet with the aggrieved employee at this stage, such a meeting was not held, and Rivera responded in writing to the grievance on December 24, 1974. In his response, Rivera maintained that the work Lloyd was performing did not warrant a promotion, that if Lloyd believed she was entitled to a higher grade she should request a desk audit of her position, and otherwise generally denied

the matters raised in the grievance.

Rivera's response being unsatisfactory to the Grievant, Pagett informed Rivera by letter dated January 16, 1975, that pursuant to Article 16, Section 8, the Grievant wished to pursue the matter to arbitration. Thereafter, by letter dated January 21, 1975, Rivera advised the Union that the dispute was not subject to the grievance procedure and thus was not arbitrable under the Agreement. On February 25, 1975, the Activity filed the instant application, seeking a decision on the arbitrability of the grievance.

I have carefully examined the documentation and evidence submitted, as well as the applicable clauses of the National Agreement, and, with the exception of the alleged violation of Article 11, Section 8, conclude that the grievance is arbitrable and must be processed pursuant to Article 17 of the National Agreement.

The Union, as one basis of the grievance, contends that management violated Article 11, Section 8, by not compensating Lloyd at a rate of pay commensurate with her job responsibilities. Chapter 51 of Title 5, United States Code, is entitled "Classification". Section 5101 of Chapter 51 defines the purpose of that Chapter as follows:

> "to provide a plan for classification of positions whereby -
> (1) in determining the rate of basic pay which an employee will receive -
> (A) the principle of equal pay for substantially equal work will be followed; and
> (B) variations in rates of basic pay paid to different employees will be in proportion to substantial differences in difficulty, responsibility, and qualification requirements of the work performed and to the contributions of employees to efficiency and economy in the services; and
> (2) individual positions will, in accordance with their duties, responsibilities, and qualification requirements, be so grouped and identified by classes and grades, as defined by Section 5102 of this title, and the various classes will be described in published standards, as provided by Section 5105 of this title, that the resulting position classification system

> can be used in all phases of personnel administration."

Section 5102 of Chapter 51 defines "position" as "the work, consisting of the duties and responsbilities assignable to an employee". Section 5103 states, "The Civil Service Commission shall determine finally the applicability of Section 5102 of this title to specific positions and employees ...".

In the instant case, employee Lloyd has been assigned, in addition to her normal duties, additional duties relating to the grants program. These duties had originally been performed by an employee who held a higher grade. These duties, having been assigned to Lloyd and performed by her on a generally continuous basis since September 1973 thereby became a part of her position. If Lloyd is contending in her grievance that the accretion of these duties resulted in an improper classification of her position, she could have requested either the Activity's personnel office or the Civil Service Commission, by way of the authority granted to it pursuant to 5 USC 5103, to audit her position to determine whether or not it was properly classified. If Lloyd had appealed to the Activity's personnel office, and that office had determined her position to be properly classified, she was still entitled to appeal that determination to the Civil Service Commission. In either event, the dispute would be one concerning the application of the classification standards to an individual position. Since 5 USC 5101, supra, specifies that a purpose of the classification standards is to implement the principle of equal pay for substantially equal work, and the Civil Service Commission has been delegated by statute with the authority to make the final determination as to whether this principle is being applied with respect to a specific position, I find, therefore, that the Grievant's contention in this instance cannot be raised under a negotiated grievance procedure by Section 13(a) of the Executive Order.

A review of the remaining bases for the grievance discloses that none are related to a classification dispute and thus subject to statutory appeals appeals procedures, but rather are matters involving the interpretation or application of the cited provisions of the parties' Agreement. Thus, Grievant Lloyd contends that Article 11, Sections 14 and 15 were violated in that she has been detailed to perform work of a higher grade level without a temporary promotion, and without being furnished a job description, a functional statement, or a memorandum for her Official Personnel Folder. In my view, it is clear that the cited clauses of the Agreement deal with procedures to be followed in connection with the detailing of an employee. As such, this aspect of the grievance is not concerned with whether or not Lloyd's position was correctly classified, nor does it constitute an attempted infringement upon any rights reserved to management by Section 12

of the Executive Order. Further, I note from the evidence submitted that the Activity has not contended, either in response to the grievance, or in support of its application, that this aspect of the grievance is not subject to the grievance and arbitration procedures contained in the Agreement. Thus, I have no alternative but to conclude that the facts alleged by the Grievant fall within the purview of the language of Article 11, Sections 14 and 15.

A third basis of the grievance alleges a violation of Article 10, Section 4, in that Lloyd's supervisor has not discussed a career-development plan with her. The language of Article 10, Section 4, in my view, appears clear and unambiguous in its application to the Grievant's contention, and I can find no indication that the parties to the Agreement intended special meaning to be attached to the words used, or that any limitations or conditions apply to the scope of this Article other than that the career-development plan is to be established "at the time of the performance evaluation". Accordingly, I find that this particular alleged violation should be included with the other parts of the grievance found arbitrable.

As a fourth basis for the grievance, the Union requested, on behalf of Lloyd, information concerning what affirmative action the Activity has taken to afford Lloyd opportunities to develop her full potential, or to receive fair and appropriate consideration for higher level jobs, and also what action the Activity has taken to afford Lloyd an incentive to improve her performance, or to provide her with attractive career opportunities. The failure of the Activity to provide such information is alleged by the Grievant to be violative of Article 12, Section 1(b),(d) and (e). Article 12 of the Agreement is entitled "Merit Promotions". Section 1 of that Article consists of a statement of the basic objectives of the merit promotion program as administered by the Activity. Read literally, Section 1 and its subsections forms a preamble which sets forth a list of goals toward which the procedures contained in the rest of the Article are aimed, and does not itself prescribe procedures or actions to be taken by either party to the Agreement. In my view, however, a claim that this aspect of the grievance is not arbitrable based on such a literal reading is unwarranted. Thus, it appears that the Grievant's invocation of Article 12, Section 1, represents an effort to seek a forum for the adjudication of a dispute which covers matters included within the scope of that Article, however broadly charged the Grievant's allegation may be. In addition, I find no evidence among the provisions of the Agreement, including Article 16, the grievance procedure, nor has any evidence been submitted by the Applicant, which would indicate an attempt by the parties to exclude Section 1 of Article 12 from those portions of the Agreement that are to be considered subject to the grievance procedure.

Indeed, it seems fundamental to the very concept of a negotiated grievance procedure that a party should be permitted to question the performance by the other party not only of specific agreed upon procedures and actions, but

also to question the accomplishment of the objectives those procedures are supposed to attain. I must conclude, therefore, that this basis of the grievance should be considered to be a matter of the interpretation of a part of the negotiated Agreement, and thus subject to arbitration under that Agreement.

The final basis for the grievance consists of the statement that, under the provisions of Article 12, Section 4(b)(7), the Activity is permitted to promote Lloyd without competition. Although no violation, per se, of this particular Section of the Agreement is specifically charged by the Grievant, it appears clear from the evidence submitted that by including such a statement in the grievance, Lloyd's contention is that, since she had been performing the additional duties, she believed she should have been promoted according to the provisions of this Section. In concluding that this basis of the grievance should also be considered arbitrable, I note that although the Grievant, by invoking this Section, is seeking, in effect, the same relief sought by her invocation of Article 11, Section 8, discussed previously, this allegation does not involve a classification problem. Whereas a dispute over the classification of a position is subject to a statutory appeals procedure, the Grievant here is seeking a promotion based on certain contractual conditions which are alleged to have been met. As I noted above, if the Grievant is seeking to rectify an improper classification of her position, a specific statutory appeals procedure is available. I find nothing in the parties' Agreement, however, which would preclude the Grievant from utilizing another avenue, which if successful would yield the same result as that obtained by the successful use of the statutory classification appeal procedures. In addition, it appears that the language of the cited Section is clearly applicable to the facts alleged by the Grievant concerning the accretion of additional duties. Whether or not these additional duties actually were of the kind that could warrant a non-competitive promotion for Lloyd is a question that is properly left to the parties to resolve through the use of the grievance and arbitration procedures available to them in the Agreement.

The Activity, in support of its application, has advanced the position that the grievance essentially concerns a position classification matter, and is therefore not arbitrable under the provisions of the Agreement. The only other aspect of the grievance on which the Activity provides a position as to arbitrability is the alleged violation of Article 10, Section 4. With respect to the first contention, it appears that the Applicant has declined to view the grievance as consisting of five separate parts, but instead contends that the Grievant's relief lies entirely in her seeking an audit of her position through the proper authorities. As noted above, only one aspect of the grievance is precluded from arbitration because of the availability of statutory appeal procedures. The Activity's position in

this regard has thereby afforded the Respondent the opportunity to advance an unrefuted interpretation of the scope of the negotiated arbitration procedure with respect to three of the bases of the grievance.

With respect to the alleged violation of Article 10, Section 4, the Activity takes the position that this particular aspect of Lloyd's grievance is not worthy of full-scale arbitration, inasmuch as the matter is "of relatively lesser consequence". Thus, the Activity seeks to argue the non-arbitrability of a dispute merely by offering a statement of its own determination of the worthiness of the question raised, without further justification and without providing any rationale for such a statement. I find such a statement to be insufficient support for a finding that the cited Article is not arbitrable.

Under all of the circumstances, and without passing upon the merits of any aspect of the grievance, I conclude that the matters raised by the grievance, with the exception of the alleged violation of Article 11, Section 8, are questions of the interpretation or application of certain provisions of the Agreement. Since the Agreement provides for the arbitration of disputes which have not been able to be resolved under the grievance procedure, it will serve the purposes of the Executive Order to direct the parties to resolve the dispute by invoking arbitration pursuant to Article 17 of the Agreement.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business July 9, 1975.

In the event no appeal is taken from this ruling, pursuant to Section 205.12 of the Executive Order's Rules and Regulations, the parties will notify the undersigned in writing as to what action they have taken to comply with this decision by July 24, 1975.

If this decision is appealed to the Assistant Secretary and my decision is affirmed, the parties will notify the undersigned of what action they have taken to comply with this decision thirty (30) days from the date of the Assistant Secretary's letter advising the parties of his decision.

DATED: June 24, 1975

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-25-75

609

Mr. Herbert Collender
President
Social Security Local 1760
American Federation of Government
Employees, AFL-CIO
P. O. Box 626
Corona - Elmhurst, New York 11373

Re: Department of HEW, Social Security Administration
Northeastern Program Center
Case No. 30-6072(GP)

Dear Mr. Collender:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the subject case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the matter raised in the instant grievance is grievable under the parties' negotiated agreement and, therefore, such matter should be resolved through the negotiated grievance machinery. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Relations, Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 3515, 1515 Broadway, New York, New York 10036.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

Department of Health, Education and
Welfare
Social Security Administration
Northeastern Program Center

Activity - Applicant

and

30-6072(GP)

Local 1760
American Federation of Government
Employees, AFL-CIO

Labor Organization

REPORT AND FINDINGS ON GRIEVABILITY

Upon application for decision on grievability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds as follows:

Local 1760, American Federation of Government Employees, AFL-CIO, hereinafter referred to as AFGE or the Respondent, is the exclusive representative of a unit of all non-supervisory employees of the Northeastern Program Center, hereinafter referred to as the Activity or the Applicant. AFGE and the Activity are parties to the Master Agreement between the National Council of Social Security Payment Center Locals and the Bureau of Retirement and Survivors Insurance of the Social Security Administration. The Agreement became effective on March 15, 1974, and is currently in effect.

On December 12, 1974, the Activity filed a written grievance with AFGE pursuant to the grievance procedure contained in the negotiated Agreement. The parties met on December 16, 1974 in an effort to resolve the grievance, but were unsuccessful. By memorandum dated January 22, 1975, AFGE informed the Activity that it did not consider the matter to be grievable. Thereafter, on February 26, 1975, the Activity filed the instant application.

The facts surrounding the filing of the grievance are not in dispute. On or about December 10, 1974, AFGE published and distributed on the Program Center premises an edition of its periodic newsletter, The Spirit of 1760. On page three of this edition there appeared an article entitled "Notes from O'Leary - Jim O'Leary, Vice-President". This article covered three separate topics:

1) The Applicant's Personnel Specialists, and the processing of grievances, 2) The reaction of Pasquale F. Caligiuri, Regional Representative, to recent union handbills, and 3) The importance of joining the union.

Management, in its grievance, cited the following sections of the Master Agreement which it contended had been violated by the publishing of the newsletter:

> Article 8 - Section a - ... The Council further agrees that their literature distributed on Program Center premises will not contain any language which will malign the character of any individual employee. Any allegations of violation of this Section will be made the subject of a prompt meeting between the Local and the Program Center.
>
> Article 4 - Section a - The Council further agrees that its representatives and representatives of the Local will consistently strive to improve communications between employees and supervisors, promote true efficiency of the Program Centers by eliminating inequities and increasing the morale of employees. Such efforts will be focused on the goal of making each Program Center a better place to work.

By letter dated January 10, 1975 the Activity advised the Respondent that the grievance was being amended to include a violation of Article 3, Section a, which reads, in pertinent part, as follows:

> "In the administration of all matters covered by the Agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities..."

As relief, the Activity requested in its grievance that Local 1760 print an apology to the Regional Representative with an assurance that the Union would refrain from attacks upon individuals in its literature distributed in the future.

In support of its application, the Activity has advanced the position that, first, the Local 1760 newsletter constitutes the type of communication contemplated by the framers of the Agreement to fall within the scope of Article 8. Since the edition of December 10, 1974 contained statements such as "Caligiuri is 'upset' with recent union fliers", and "He is so 'upset'

that he can't think straight", the Applicant contends, the Respondent is therefore in direct violation of Article 8's proscription against the use of language in Local literature which maligns the character of an individual employee.

Secondly, the Activity contends that the newsletter's comments with respect to the Activity's Personnel Specialists consisted of irresponsible and untruthful statements, which served to cause a breakdown in communications between employees and supervisors. The AFGE thereby violated Article 4 of the Agreement.

The January 10, 1975 amendment to the grievance is based on the position that Executive Order 11491 is one of the regulations of appropriate authorities referred to in Article 3, Section a, of the Agreement. Since Section 20 of the Order directs that internal business of a labor organization shall be conducted during the non-duty hours of the employees concerned, and further that the distribution of the Local 1760 newsletter is alleged by the Activity to have taken place during working hours, such distribution also constitutes a violation of the Agreement.

In its response to the application, the AFGE has contended that the Activity's grievance is not grievable. In support of this contention, the Respondent has stated, first, that the grievance is procedurally defective in that management failed to make its objections to the contents of the newsletter the subject of a prompt meeting between the Local and the Program Center, as required by Article 8, Section a, of the Agreement. Secondly, the Respondent states that the matter is not grievable because the Applicant has refused to provide the Union with specific details concerning the distribution of the newsletter without which the Respondent is unable to rule upon the grievability of the grievance. Thirdly, the Respondent contends that since it agrees to do all in its power to prevent the distribution of such literature in the future, the Applicant has thus been given all the relief it could reasonably have been expected to obtain even if the grievance had been processed. Finally, the Respondent argues that since the newsletter is internal union business, the apology the Applicant seeks in its grievance would, if granted, constitute implied allowance of interference by management in the internal affairs of a labor organization. Central to the entire dispute, in the Respondent's view, is the right of the Union to free speech and management's attempts to abridge that right by exercising control over the contents of the Union newsletter.

I have carefully considered the positions of the parties, the documentation and evidence submitted, as well as the applicable clauses of the Master Agreement, and conclude that the issue can best be resolved through the grievance procedure contained in Article 28 of the Agreement. In my view, the language of Articles 8 and 4 of the Agreement appears to be directly applicable to the fact situation presented by the instant dispute. Thus,

management has invoked Article 8 as a vehicle by which it seeks to object to the contents of the Local 1760 newsletter. Article 8, by its terms, covers the broad category, "Local literature, correspondence, notices, etc.", without qualification, and I have no alternative but to conclude that the AFGE newsletter in question falls within the scope of such language.

Article 4, entitled "Rights of the Union", provides for efforts to be made by the Union to improve communications between employees and supervisors. There is no language contained in this Article which could serve to limit the application of the Article to specific methods or means, nor is any indication of the intentions of the framers of the Article which would give special meaning to the language used. In the absence of any such expressed limitations, I must conclude that the Activity's allegation in its grievance, that the AFGE newsletter lessened communications, is a question of the application or interpretation of Article 4, Section a, and must be resolved by the parties pursuant to the procedure contained in the Agreement for the resolution of such questions.

The Applicant's grievance also raises the issue of whether management may use Article 3, Section a, of the Agreement as a forum to litigate what it alleges to be a violation of Section 20 of Executive Order 11491. Thus, this aspect of the grievance involves an additional question of interpretation beyond the mere application of contract language to a fact situation, namely, whether Executive Order 11491 may be deemed to be incorporated into the meaning of Article 3, Section a, of the parties' Agreement. Once this question is resolved, it remains to be decided whether Article 3 can be considered to cover the distribution of the AFGE newsletter.

Article 3 of the Agreement is a statement which is required by Section 12 of the Executive Order to be expressly included in every agreement between an agency and a labor organization. Section 12 states, as Article 3 does, that "in the administration of all matters covered by the agreement ..." the parties will be governed by "existing or future laws and the regulations of appropriate authorities ...". The Federal Labor Relations Council has interpreted the term "appropriate authorities" as used in Section 12 to mean "those authorities outside the agency concerned, which are empowered to issue regulations and policies binding on such agency".[1/] The present question is, therefore, whether the Executive Order itself is the regulation of an authority which is empowered to issue binding regulations on the Social Security Administration. Inasmuch as Executive Order 11491 is a directive

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1/ Aberdeen Proving Ground, Aberdeen, Maryland, FLRC 70 A-9.

issued by the President, and is based upon the President's constitutional authority to issue regulations governing the Executive departments and agencies, I find that the Order is such an "appropriate authority". It would follow, then, that the Order would fall within the scope of Article 3, Section a, of the Agreement, and should be considered to govern the matters contained in the Agreement.

Such a finding, however, resolves only part of the question of Article 3's applicability to the grievance. Article 3 specifies that such regulations shall govern the administration of "matters covered by the Agreement". Hence, the question becomes whether the distribution of the AFGE newsletter is a matter covered by the Agreement. To answer this question, we need only refer back to Article 8, Section a, discussed previously. That section, by its terms, deals with Local literature distributed on Program Center premises. It is an inescapable conclusion, therefore, that the Agreement covers the matter of the distribution of Local literature, and that the Activity's invocation of Article 3 in this instance must be considered proper.

As to the Respondent's position with respect to the application, I find that the arguments the AFGE has advanced in support of its contention that the dispute is not subject to the negotiated grievance procedure are not sufficient to alter my conclusion that the dispute must be resolved through that procedure.

Thus, the Respondent contends that the Applicant has not followed the required procedures in processing its grievance, specifically, that a prompt meeting was not held to discuss the alleged violation of Article 8. In fact, however, the submissions of the parties show that a meeting to discuss the grievance was held on December 16, 1974. The Respondent would distinguish this meeting, which was held pursuant to Article 28, Section g, the grievance procedure, from that called for by Article 8, Section a. I find no evidence, however, which would indicate that a meeting held pursuant to Article 28, during which the alleged violation of Article 8 was apparently discussed by the parties, would not also satisfy the meeting requirement of Article 8, the stated purpose of which is to discuss any alleged violation. In addition, it would appear the four-day elapsed period between the filing of the grievance and the meeting would satisfy the requirement of promptness.

Secondly, the Respondent contends that the Activity failed to provide sufficient details concerning the basis of its grievance to allow the Respondent to rule upon its grievability. A review of Article 28, however, shows that the grievant is required only to submit its disagreement over the interpretation or application of the Agreement to the designated authority, in this case the President of the Local. Article 28, by its terms, does not require

any information other than the specification of the incident giving rise to the grievance and specification of the section of the Agreement believed to have been violated. The Activity's memorandum of December 12, 1974, which constituted the original filing of the grievance, appears to satisfy the requirement of Article 28. If in fact the Respondent considered the grievance to be lacking in certain specific information, this may conceivably affect its resolution, but, in my view, does not affect the grievability of the matter.

Thirdly, with respect to the Respondent's position that it has already provided the Activity with the relief it should have sought, it appears that this also would represent an issue which might affect resolution of the dispute, but which does not bear upon the prior question of grievability. Hence, I reject that argument.

Likewise, the Respondent's last contention, that the dispute is really one of the Union's right to free speech, and therefore any relief granted to management would violate the Executive Order by allowing interference in the internal affairs of a labor organization, overlooks the threshold question of grievability raised by the application. Thus, in my view, the Respondent may not properly insulate itself against the filing of grievances by claiming that possible adverse effects would result from the resolution of such grievances. The satisfactory adjudication of disputes is the purpose of any grievance machinery. A settlement which is perceived by both parties to be equitable, and also which is consistent with the body of existing law and regulation governing collective bargaining relationships in the Federal Sector, should be striven for by the parties themselves through their use of that machinery. The fair resolution of such disputes over the interpretation or application of contract terms, however, is not within the purview of the Assistant Secretary's responsibility under Section 13 of the Order; the responsibility under that Section is only to decide whether the dispute falls within the jurisdiction of the parties' own negotiated procedure.

Under all of the circumstances, and without passing upon the merits of the Applicant's grievance, it appears that the issue of whether the contents or the distribution of the AFGE newsletter is in violation of certain provisions of the Agreement is a matter of the interpretation or application of the above-cited Articles. I, therefore, conclude that since the Agreement provides a means by which such a dispute may be resolved, it will serve the purposes of the Order to direct the parties to resolve the dispute through the negotiated grievance procedure contained in Article 28 of the Master Agreement.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action

by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business June 25, 1975.

In the event no appeal is taken from this ruling, pursuant to Section 205.12 of the Executive Order's Rules and Regulations, the parties will notify the undersigned in writing as to what action they have taken to comply with this decision by July 14, 1975.

If this decision is appealed to the Assistant Secretary and my decision is affirmed, the parties will notify the undersigned of what action they have taken to comply with this decision thirty (30) days from the date of the Assistant Secretary's letter advising the parties of his decision.

DATED: June 12, 1975

LABOR MANAGEMENT SERVICES ADMINISTRATION

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-25-75

Mr. Donald W. Jones
President
Local 1395, American Federation of
Government Employees, AFL-CIO
165 North Canal Street
Chicago, Illinois 60606

610

Re: Department of Health, Education and Welfare
Social Security Administration
Great Lakes Program Center
Case No. 50-13024(CA)

Dear Mr. Jones:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, that further proceedings in this matter are unwarranted. Thus, in my view, the evidence herein was insufficient to establish a reasonable basis for the allegation that the Respondent disallowed Henrietta Brown 15 minutes of overtime and issued her a letter of admonishment because of her union activity, or because she filed a complaint or gave testimony under the Order. In this regard, see Section 203.6(e) of the Assistant Secretary's Regulations which provides, in pertinent part, that, "The complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in its complaint...."

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF HEALTH, EDUCATION, AND
WELFARE, SOCIAL SECURITY ADMINISTRATION,
GREAT LAKES PROGRAM CENTER, CHICAGO, ILLINOIS,

Respondent

and Case No. 50-13024(CA)

LOCAL 1395, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO,

Complainant

The Complaint in the above-captioned case was filed in the office of the Chicago Area Director on April 7, 1975. It alleges a violation of Section 19(a)(1) and (4) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in this case.

It is alleged that the Respondent violated Section 19(a)(1) and (4) of the Order by (1) unfairly disallowing fifteen (15) minutes of overtime to Henrietta Brown, Vice-President and Chief Steward of Complainant Local, (2) issuing to Henrietta Brown an unfair letter of admonishment regarding her alleged false reporting of overtime worked, and (3) unfairly restricting Henrietta Brown from overtime work and placing her "on 100% review".

Attached to the Complaint are two pre-complaint charges, one having been filed with the Respondent on January 10, 1975, which alleged violations of Section 19(a)(1), (2) and (6) of the Order, and the other one having been filed with the Respondent on February 3, 1975, which alleges violations of Section 19(a)(1) and (4) of the Order. It is clear that the earlier charge would be necessary to support the allegation numbered "(3)" above, and that the Complaint herein would be untimely with respect to the Respondent's final answer to that earlier charge. Indeed, this is recognized by the Complainant in its position dated May 9, 1975, entitled "supplement". I shall consider only the issues numbered "(1)" and "(2)".

Henrietta Brown was disallowed fifteen (15) minutes of overtime for January 2, 1975, as it was observed by the Manager in charge of her unit that Brown did not report until 15 minutes beyond when overtime work began. The same Manager noticed on January 3, 1975, that Brown had "misreported" an extra 65 minutes of overtime beyond when overtime work ended. Brown was told by her Manager on

January 15, 1975, that a letter of admonishment for having misreported overtime would be issued. A meeting was held on January 17, 1975, at which Brown was present with a representative of Local 1395. During this meeting, termed an "admonishment interview", Brown refused to answer questions put to her by management, and on January 17, 1975, a memorandum of admonishment was issued to Brown.

An "Informal Grievance" was initiated on Brown's behalf by Local 1395, and filed with the Respondent on February 3, 1975 (the date on which the pre-complaint Charge herein was also filed with the Respondent). The grievance states that management's report of the January 17 meeting omitted pertinent data. Thereafter, on April 4, 1975, the Union pressed this grievance into the "formal stage", claiming further this time that the report of the meeting contained only statements damaging to Brown. On April 16, 197 the Union requested that a Grievance Examiner under the Agency grievan procedure be appointed to the matter.

Throughout the time the Union was pressing its grievance, the Respondent took the position that, while the matter could be raised under the parties' negotiated grievance procedure, it could not be raised under the Agency grievance procedure. The interpretation of various provisions of the parties' negotiated agreement were argued back and forth in an exchange of letters and memos on this matter. Meanwhile, the Union also continued to press its Charge; meetings on both matters were held; letters were exchanged. Finally, the Complaint herein was filed.

The Respondent takes the position that the matters raised in the Complaint cannot be raised with the Assistant Secretary, as it is a problem of interpretation of the parties' negotiated agreement. I find no merit in this contention. The dispute between the parties as to whether the nature of the matter in question could be raised under the Agency procedure or the negotiated procedure is an issue not before me. The Respondent also argues that the matter raised in the Complaint was raised in the grievance, and that I should therefore dismiss the Complaint, an argument that I find has merit.

The Complainant admits that the grievance raised the issue whether the memorandum of admonishment to Brown was prepared pursuant to proper procedures, but argues that the Complaint raised a different issue - that is, whether the memorandum was issued because of Brown's union activity. The Complainant further argues that the issue whether the denial of the fifteen (15) minutes overtime was because of Brown's union activity is an issue not raised in the grievance.

I do not disagree with the Complainant that it is possible for unfair labor practices to occur in the processing of grievances. It may even be true that the Complainant honestly and dilligently tried to keep separated the issues that it argues were kept out of the grievance proceedings herein, such as they were. It may also

be true that the dispute over the proper grievance forum was frustrating to both parties, particularly the Complainant. However, in my view the record reveals clearly that, in the exchange of correspondence and during the meetings between the parties over the grievance filed, the merits of the issues raised in the instant Complaint were discussed.

Section 19(d) of the Order provides that " . . . Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures." I find that, having raised the issues presented to me under a grievance procedure, those issues may not be raised in a complaint before the Assistant Secretary. See United States Department of Air Force, Warner Robins Air Material Area (WRAMA), A/SLMR No. 340.

Having considered carefully all the facts and circumstances in this case, including the Charge, the Complaint, the positions of the parties and all that which is set forth above, the Complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor Management Relations, LMSA, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than close of business August 1, 1975

Dated at Chicago, Illinois this 17th day of July, 1975.

R. C. DeMarco, Assistant Regional Direct
United States Department of Labor
Labor Management Services Administration
230 South Dearborn Street, Room 1033B
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-25-75

611

Mr. James R. Rosa
Staff Counsel
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Avenue, N. W.
Washington, D. C. 20005

Re: U. S. Civil Service Commission
Case No. 30-6103(CA)

Dear Mr. Rosa:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings are unwarranted. In this connection, I find that the evidence establishes that the Respondent's actions herein were pursuant to its statutory role to ensure compliance with the merit system and, therefore, the Respondent did not meet the definition of "agency management" as set forth in Section 2(f) of the Order. In this regard, see Department of the Navy and U. S. Civil Service Commission, A/SLMR No. 529.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway, New York, New York 10036

July 8, 1975

Mr. Paul Hecht, President
Local 3134 AFGE, AFL-CIO
Small Business Administration
26 Federal Plaza
New York, New York 10007

Re: U. S. Civil Service Commission
Case No. 30-6103 (CA)

Dear Mr. Hecht:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

In your complaint filed March 17, 1975, you allege that the Civil Service Commission (hereafter referred to as respondent) while acting as an arm of management (Small Business Administration) violated Section 19(a)(1) and (6) of the Order as amended by unilaterally reconstructing sixteen (16) promotional actions initiated by the Small Business Administration (SBA) without consulting, conferring or negotiating with Local 3134 American Federation of Government Employees, AFL-CIO, hereafter referred to as complainant.1/

It is apparent from the evidence submitted by the parties that the SBA in early 1972 underwent a reorganization which resulted in the downgrading of a number of employees in the exclusive unit represented by complainant. Subsequent to the reorganization and prior to May, 1972, some of the downgraded employees applied for vacancies which would have resulted in promotions, but none were selected. Sometime prior to May, 1972, the union by letter complained to respondent maintaining the SBA had not given priority consideration to the downgraded employees. Respondent met with

1/ Complainant in a letter attached to the complaint alleges that respondent violated Section 25(a) of the Order. I find it unnecessary to make any finding on this allegation since Section 25(a) merely delineates certain responsibilities of respondent and does not set forth any rights assured under the Order.

the SBA and by letter dated May 17, 1972, advised complainant it had received assurance from the SBA that prior consideration would be given to demoted employees. During 1973, complainant advised respondent of incidents involving the applicability of priority consideration. Subsequent discussions between respondent and the SBA were held. In October 1973 respondent by letters advised complainant that a "formal priority referral system" had been established within the SBA. Subsequently additional vacancies occurred and employees on the repromotion register were not selected. Apparently complainant contacted respondent who then contacted the SBA concerning the promotions. By letter dated January 18, 1974, respondent advised complainant that the SBA had been requested to reconstruct certain promotional actions. Apparently the SBA did reconstruct certain promotional actions and advised respondent of the results. Subsequently respondent on December 5, 1974, advised complainant that the SBA had complied with respondent's request. The reconstruction action did not result in any employees being selected from the repromotion register and complainant filed the instant complaint.

The issue presented is whether respondent was obligated under the Executive Order to consult, confer or negotiate with complainant concerning the reconstruction of the promotion actions. It is undisputed that complainant is not the exclusive representative of any of respondent's employees. Finding no direct relationship between complainant and respondent, it is necessary to look at the relationship between respondent and the SBA to determine if respondent was acting as an agent for the SBA. Based upon the evidence submitted, it is apparent that respondent was acting in accordance with its statutory role to ensure compliance with merit system rules and regulations. No evidence has been adduced to support a finding that respondent was acting as an agent or advisor to the SBA.

In view of the foregoing, respondent was under no obligation to consult, confer or negotiate with complainant and cannot therefore be found to have violated Section 19(a)(6) of the Order. Finding no reasonable basis to conclude that Section 19(a)(6) may have been violated, there is no basis upon which one may conclude that such conduct may also have been violative of Section 19(a)(1) of the Order.2/

Having found no reasonable basis to conclude that the Order may have been violated, I am dismissing the complaint.3/

2/ Section 10(e) of the Order is not applicable in the instant complaint since complainant is not the recognized representative of any of respondent's employees.

3/ In view of my disposition of this matter on its merits, I find it unnecessary to rule on the timeliness issue raised by respondent.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U. S. Dept. of Labor, Washington, D. C. 20216, not later than the COB July 23, 1975.

Sincerely,

Benjamin B. Naumoff
New York Region

cc: George J. McQuoid, Regional Director
U. S. Civil Service Commission
26 Federal Plaza
New York, N.Y. 10007

Anthony F. Ingrassia, Director
U. S. Civil Service Commission
Office of Labor-Management Relations
Washington, D. C. 20415

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-25-75

Mr. Ralph L. Erdrich
313 North 7th
Wahpeton, North Dakota 58075

612

Re: U. S. Department of Interior
Bureau of Indian Affairs
Wahpeton Indian School
Wahpeton, North Dakota
Case No. 60-3974(G&A)

Dear Mr. Erdrich:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the above-named case.

In agreement with the Assistant Regional Director, I find that the instant grievance involving the processing of your promotion recommendation is not grievable. In reaching this conclusion, I reject your contention that Article III, (1) of the negotiated agreement governs the processing of recommendations for promotion. In this connection, it was noted that Article III, (1) expressly provides that, "These matters [such as promotion plans] relate to policy determinations, not to day-to-day operations of individuals' dissatisfactions." (Emphasis added.) In addition, it was noted that Supplemental Agreement No. 2 concerning the processing of recommendations for promotion had not been formally approved and, therefore, was not incorporated as part of the negotiated agreement at all times material herein.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
KANSAS CITY REGION

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WAHPETON INDIAN SCHOOL
WAHPETON, NORTH DAKOTA (Activity)

and

MR. RALPH L. ERDRICH
313 North 7th
WAHPETON, NORTH DAKOTA (Employee-Applicant)

Case No. 60-3974(G&A)

REPORT AND FINDINGS
ON
APPLICATION FOR DECISION ON GRIEVABILITY OR ARBITRABILITY

Upon the filing of an application for Decision on Grievability or Arbitrability in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds as follows:

The Activity and National Federation of Federal Employees Local 208 are parties to a negotiated agreement which was approved and became effective on August 6, 1971. Article X "Changes to the Agreement" provides in part that the agreement ". . . will automatically remain in effect from year to year . . . ."

The facts, undisputed by the parties, leading to the filing of the instant application are as follows:

During the week of December 17, 1970, Ralph Erdrich, an employee in the certified unit, was recommended along with two fellow employees for promotion under the "Master Teacher Program". The recommendations of Mr. Erdrich's fellow employees were approved and processed in January 1971 while Mr. Erdrich's recommendation was returned for "further justification". Promotions were effective for Mr. Erdrich's two fellow co-

workers by March 1971. The recommendation for Mr. Erdrich's promotion was approved and forwarded to appropriate processing authority in October 1971. Mr. Erdrich was informed by letter dated Janaury 13, 1972, from the superintendent of Wahpeton Indian School, that due to a "Wage and Price Freeze" no action would be taken on his promotion. After verbal and written complaints by Mr. Erdrich concerning the processing of his promotion, on May 8, 1974, he submitted a written grievance to the superintendent alleging that the situation giving rise to the grievance is a continuing one and is not affected by the time limitations enumerated in Article VIII of the agreement. Under dates of May 14, 1974 and May 23, 1974, Mr. Erdrich received written response from the superintendent which stated, in part, "I do not believe that this matter can be resolved through our negotiated grievance process".

By memo of May 23, 1974, Mr. Erdrich reiterated his assertion that the matter is grievable under Article III of the Agreement and that it be processed. By letter of June 6, 1974, the Bureau of Indian Affairs, Aberdeen Area Office, Area Personnel Officer refused the request and stated, in pertinent part:

"The basic grievance appears to be your contention that there has been an unwarranted delay in processing the promotion that Mr. Wellington recommended for you. A procedure governing the submission of promotions or the classification of positions is not part of the negotiated agreement, therefore, we will not process your grievance under the negotiated procedures.

Article III of the Basic Agreement, as amended, states in pertinent part, "The following grievance procedure shall be the exclusive procedure concerning the intent and application of this Agreement available to the employees (individual or groups of employees) of the unit covered by this Agreement." It is our opinion that this language limits matters that can be grieved about under the negotiated procedure to those items, procedures or processes that the Agreement specifically covers."

On January 1, 1975, the instant application for Decision on Grievability was filed by Mr. Erdrich with the Area Director, Kansas City Area Office, LMSA. I find that the Assistant Secretary has jurisdiction in this matter under Section 13(d) of Executive Order 11491, as amended, and that the subject agreement was in effect at the time the instant grievance was initiated.

The Article of the Agreement cited reads as follows:

Article III, Matters for Consultation

1. It is agreed that matters appropriate for consultation and negotiation between the parties shall include personnel policies and working conditions, including but not limited to such matters as safety, training, labor-management cooperation, employee services, methods of adjusting grievances and appeals, granting leave, promotion plans, demotion practices, pay practices, reduction-in-force practices and hours of work which are within the discretion of the Officer in Charge, Wahpeton Indian School. These matters relate to policy determinations, not to day-to-day operations of individuals' dissatisfactions. No obligation exists to consult or negotiate with the Union with respect to such areas of discretion and policy as the objectives of the unit, its budget, its organization and the assignment of its personnel, or the technology of performing its work. This does not limit discussion on these matters. The Employer shall give as much notice as possible of such proposed changes that will have an important and direct impact upon the work force. This notice may be orally or in writing, but must be in writing if the Union so requests.

2. The Union shall be responsible for advising the Employer of the probable effects such anticipated actions would have on employee morale and effectiveness with particular regard to the impact on objective accomplishment. Such advice will be provided for impending actions considered to be constructive as well as for those believed to be adverse. This advice may be made orally or in writing, but must be in writing if the Employer so requests.

In connection with the above matter, Mr. Erdrich contends that Article III was violated in that no limit is imposed on consultation and negotiation of the items covered in that Article and that this matter is appropriate for such action. Erdrich asserts that there was an unjust delay in processing his promotion recommendation and that absent that delay, his promotion would have occurred.

On the other hand, the Activity maintains that, although a delay occurred in processing Mr. Erdrich's recommendation for promotion, the proper avenue for redress is through the Agency grievance procedure. The Activity contends that Article VIII 7, Grievance Procedure, of the Agreement limits matters which can properly be pursued through the negotiated grievance procedure in that Article VIII 7 states, in part "The following grievance procedure shall be the exclusive procedure concerning the interpretation and application of this agreement available to the employees (individuals or groups

of employees of the unit) covered by this agreement".

Mr. Arthur J. Azure, President of Local 208, National Federation of Federal Employees, exclusive representative of employees in the certified unit, contends that Mr. Erdrich "has good cause for grievance" because his promotion would have "gone through" if there had been no delay in processing his promotion recommendation.

I have carefully considered the positions of the parties, and particularly in view of the provisions of Article III of the Agreement. I have been unable to find that any evidence submitted by the parties substantiates that the Agreement is applicable to the matter at hand. I find that Article III of the Agreement relates to consultation and negotiation between the parties and specifically applies to policy determinations. Article III, by its very language, makes clear that the procedure does not apply to "day-to-day operations of individuals dissatisfactions". I further find that no evidence has been presented which indicates that consultation and negotiation has been requested or denied concerning the instant matter. I therefore conclude that the application should be and is hereby denied.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, a party may obtain a review of this finding by filing a Request for Review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the Request for Review must be served on the undersigned Assistant Regional Director for Labor-Management Services, as well as the other parties. A Statement of Service should accompany the Request for Review. The Request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 26, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

CULLEN P. KEOUGH
Assistant Regional Director
for Labor-Management Services
Kansas City Region

Dated: June 11, 1975

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-25-75

613

Mr. Lawrence C. Cushing, President
National Association of Air Traffic
Specialists
Suite 200
4630 Montgomery Avenue
Washington, D. C. 20014

Re: Department of Transportation
Federal Aviation Administration
Rocky Mountain Region
Denver, Colorado
Case No. 61-2592(CA)

Dear Mr. Cushing:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings on the instant complaint are unwarranted. In this regard, it was noted particularly that the evidence established that the memo which is the subject of the instant complaint was an internal management document designed to provide advice and guidance to management officials on the meaning of Article 19, Section 5 of the parties' negotiated agreement and that the Respondent did not distribute such memo to unit employees.

Accordingly, under these circumstances, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

July 9, 1975

Certified Mail #212669

Mr. L. John Bangerter
Regional Director
National Association of
Air Traffic Specialists
Rocky Mountain Region
127 N. 1050 W.
Cedar City, Utah 84720

Re: DOT, FAA, Rocky Mountain Region
NAATS, Denver, Colorado
Case No. 61-2592-CA

Dear Mr. Bangerter:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, the evidence submitted does not support a finding that the Respondent engaged in any concerted activity which would tend to "discourage membership" in any labor organization nor does the evidence indicate anti-union animus by the Respondent.

Although it is alleged that the contents of the "reminder memo" issued by the Respondent on or about December 2, 1974, violates an arbitrator's decision in similar circumstances in Miami, Florida, there is no indication, nor is it even alleged that there was specific noncompliance with that particular ruling. In addition, the evidence submitted does not indicate, nor is it even alleged, that the contents of the "reminder memo" was designed to reach unit employees.

It appears that the circumstances presented indicate a disagreement over the interpretation of an existing collective bargaining agreement which provides a procedure for resolving the disagreement. The Assistant Secretary has held that he would not consider such issues in the context of an unfair labor practice, but would leave the parties to resolve such issues in accordance with the provisions of the collective bargaining agreement. 1/

I am, therefore, dismissing the complaint in this matter.

1/ See Report on a Decision of the Assistant Secretary, Report No. 49 (copy attached).

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business July 24, 1975.

Sincerely,

Cullen P. Keough
Assistant Regional Director
for Labor Management Services

Enclosure

cc: Mr. Mervin M. Martin, Director — Certified Mail #212670
DOT, FAA, Rocky Mountain Region
Park Hill Station
P.O. Box 7213
Denver, Colorado 80207

Mr. Lawrence Cushing — Certified Mail #212671
NAATS Executive Director, NAATS
4630 Montgomery Avenue
Washington, D.C. 20014

Mr. Alva W. Jones, Area Director
U.S. Department of Labor, LMSA
2320 Federal Office Building
1961 Stout Street
Denver, Colorado 80202

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-25-75

Ms. Joan Greene
2032 Cunningham Drive, Apt. 201 614
Hampton, Virginia 23666

Re: Department of the Air Force
Headquarters, Tactical Air Command
Langley Air Force Base, Virginia
Case Nos. 22-6261(CA) and
22-6263(CA)

Dear Ms. Greene:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaints in the above-named cases.

In agreement with the Assistant Regional Director, and based upon his reasoning, I find that the complaints in the subject cases were properly dismissed. Thus, inasmuch as you had no authority to act as a representative or agent of the National Association of Government Employees, Local R4-106 (NAGE) at the time of the filing of the complaints, and in view of the fact that you filed the pre-complaint charges in the subject cases on behalf of the NAGE, rather than in an individual capacity, I conclude that you had no standing to file the instant unfair labor practice complaints.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaints, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

September 8, 1975

Ms. Joan Greene
4500 Air Base Wing/HC
Langley Air Force Base, Va. 23665
(Cert. Mail No. 701731)

Re: Department of the Air Force
Headquarters, Tactical Air Command,
Langley Air Force Base, Va. (Respondent)
Joan Greene (Complainant)
Case No. 22-6261(CA)
Case No. 22-6263(CA)

Dear Ms. Greene:

The above captioned cases alleging violations of Executive Order 11491, as amended, have been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaints has not been established.

The investigation has revealed that on April 9, 1975, you in the capacity of President Pro Tem, NAGE, Local R4-106, filed two separate Unfair Labor Practice charges on behalf of NAGE, Local R4-106, against the Headquarters Tactical Air Command, one, alleging that on March 14, 1975, the Respondent had denied the union the right to be represented at a meeting on a grievance after the employee involved had requested union representation in violation of Section 19(a)(1) of the Executive Order and the other that on March 20, 1975, the Respondent refused to discuss a grievance relating to the keeping of time and attendance with you, in violation of Sections 19(a)(1) and (6) of the Order.

On May 2, 1975, you were removed as President Pro Tem of NAGE, Local R4-106, and a new President was appointed. On July 7, 1975, you filed the subject Unfair Labor Practice complaints, as an individual, on the same matters involved in the charges filed by NAGE, Local R4-106, on April 9, 1975.

The Respondent still is attempting to informally resolve the charges with NAGE, Local R4-106.

I find that since you are not a representative or authorized agent of NAGE, Local R4-106, that you have no standing to file an Unfair Labor Practice complaint on behalf of NAGE, Local R4-106.

Furthermore, I find that your complaints were not timely filed within the Regulations of the Assistant Secretary. Section 203.2 of the Rules and Regulations of the Assistant Secretary provides that a party desiring to file a complaint alleging an Unfair Labor Practice must first file a charge in writing directly with the party or parties against whom the charge is directed. No charge was filed by you as an individual with the Respondent on the matters contained in your complaints.

I am therefore dismissing the complaints in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20001. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business September 23, 1975.

Sincerely yours,

Kenneth L. Evans

Kenneth L. Evans
Assistant Regional Director
for Labor-Management Services

cc: Captain Edmund [illegible]
Labor Relations Counsel
Headquarters
Tactical Air Command-JAD
Langley Air Force Base, Va. 22365
(Cert. Mail No. 701732)

bcc: S. Jesse Reuben, OFLMR
Dow Walker, AD/WAO

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

11-25-75

615

Ms. Lisa Renee Strax
Staff Attorney
National Federation of Federal
Employees
Legal Department
1737 H Street, N. W.
Washington, D. C. 20006

Re: U. S. Department of the Army
U. S. Materiel Command, Headquarters
Case No. 22-6280(CA)

Dear Ms. Strax:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (5), and (6) of the Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted inasmuch as the evidence presented establishes that the Complainant acquiesced in the establishment of the AMC Headquarters Employee Council. In this regard, it should be noted, however, that the Complainant's acquiescence in the establishment of the Council would not relieve the Activity of its obligation under Section 11(a) of the Order to meet and confer with the Complainant concerning matters considered by the Council which affect unit employees. Cf. Veterans Administration, Veterans Administration Hospital, Muskogee, Oklahoma, A/SLMR No. 301.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

September 12, 1975

Ms. Lisa Renee Strax
Staff Attorney
National Federation of Federal Employees
Legal Department
1737 H Street, NW
Washington, D.C. 20006
(Cert. Mail No. 701846)

Re: U. S. Department of the Army
U. S. Army Materiel Command,
Headquarters
Case No. 22-6280(CA)

Dear Ms. Strax:

The above-captioned case alleging a violation of Executive Order 11491, as amended, has been investigated and carefully considered. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation revealed that you filed a complaint on July 21, 1975 on behalf of National Federation of Federal Employees, Local 1332, alleging, basically, that the Respondent violated Section 19(a)(1), (5) and (6) of the Executive Order by establishing an AMC Headquarters Employee Council without prior negotiation with the Union. You further allege that the establishment of the Council was an attempt to by-pass the exclusive representative and communicate directly with unit employees.

You assert that, prior to the decision to establish such a Council, there should have been negotiation with the exclusive representative. 1/ You allege that the Union was informed of the Activity's decision to establish the Council "after-the-fact," however, you present no evidence that the Union in any way questioned or challenged the alleged finality of the decision by the Activity. On the contrary, a Union Representative attended two Council meetings without interposing any objection. Nor do you present any evidence that the Union, at any time, requested negotiations on the establishment of the Council. In view of the above, no evidence has been presented that the Activity had foreclosed bargaining on the subject. No evidence has been presented, nor

1/ I agree that, with the establishment of the Council, a procedure for dealing with employee complaints, grievances and suggestions about certain aspects of their working conditions was instituted and is encompassed by the requirements of Section 11(b) of the Order.

even an allegation made, that the Activity informed unit employees of its intention to establish the Council prior to informing the Union. Neither has evidence been presented nor specific allegations made that the Activity expressed an intention or actually used the Employee Council to by-pass the exclusive representative and communicate directly with the employees.

In view of all of the above, it appears that the lack of negotiations over the subject of the establishment of the Employee Council stemmed from the failure of the Union to request negotiations rather than the Activity's refusal to consult.2/ In any event, the evidence does not support a reasonable basis for complaint in the allegation of a 19(a)(1) and (6) violation in the matter of the lack of negotiations prior to the establishment of the Employee Council. Nor does the evidence support a reasonable basis for complaint in the allegation that such establishment was an attempt to by-pass the exclusive and communicate directly with employees and, thus, also in violation of Section 19(a)(1) and (6).

Regarding your allegation of a violation of Section 19(a)(5) of the Order, it should be noted that this Section relates to matters related to the accord of exclusive recognition rather than to conduct of the collective bargaining relationship. You have presented no evidence that the Activity engaged in any behaviour which would have been violative of this Section. Therefore, a reasonable basis for complaint that a violation of Section 19(a)(5) occurred has not been established.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, Washington, D.C. 20216, not later than close of business September 29, 1975.

Sincerely,

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

cc: Mr. Philip Barbre, Chief, Headquarters
Civilian Personnel Office
Department of the Army
U.S. Army Materiel Command
Personnel Support Agency
Washington, D.C. 20315
(Cert. Mail No. 701847)

2/ U.S. Department of Air Force, Norton Air Force Base, A/SLMR No. 261.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-25-75

Mr. Phillip K. Kete
President
National Council of CSA Locals
1200 19th Street N. W.
Washington, D. C. 20506

616

Re: Community Services Administration
Case No. 22-5908(AP)

Dear Mr. Kete:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the instant grievance involving the alleged failure of the Activity to provide the Union with certain documents during the processing of the Waller-Street grievance is not grievable. Thus, the evidence reveals that the matters involved in the instant grievance were previously raised before an arbitrator in the Waller-Street grievance by the Union and that the arbitrator decided such matters in assessing the arbitration costs to the Union. Under these circumstances, and noting particularly that the parties' negotiated agreement incorporates a grievance procedure which culminates in final and binding arbitration, I find that further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Community Services Administration

Agency/Applicant

and

Case No. 22-5908(AP)

American Federation of Government Employees,
AFL-CIO, National Council of CSA Locals

Labor Organization

REPORT AND FINDINGS
ON
GRIEVABILITY OR ARBITRABILITY

Upon Application for a Decision on Grievability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds as follows:

The issue raised by the Applicant is:

> The Union has filed this grievance, alleging violation of Article 16, Sections 1 and 3 of the National Agreement, due to Management's failure to provide the Union with requested documents prior to the Waller-Street arbitration on January 13, 1975. The Agency believes that this matter is not grievable under the negotiated grievance procedure because it has already been heard and decided by an arbitrator.

The grievance filed by the Union on March 20, 1975, alleged, inter alia:

> "In an effort to develop the facts concerning the case, the union on December 30, 1974, requested certain documents from you. You denied these documents to us. At the arbitration hearing you introduced several of these documents, but continued to deny us others. Your conduct made impossible any settlement of the grievance prior to arbitration and hamstrung our attempts to prepare for the arbitration."

The parties are signatories to a basic agreement which is dated March 21, 1972, and to the amendment which is dated September 11, 1973.

Article 16, Sections 1 and 3 of the National Agreement read:

ARTICLE 16. GRIEVANCE PROCEDURE

Section 1. The purpose of this article is to provide for a mutually acceptable method for the prompt and equitable settlement of grievances over the interpretation or application of this Agreement. This negotiated procedure shall be the exclusive procedure available to the Union and the employees in the bargaining unit for resolving such grievances. The only matters excluded from this negotiated grievance procedure are those matters for which appeals procedures are specified in statute or regulations or interpretation of regulations by appropriate authorities, such as the Civil Service Commission, Office of Management and Budget, General Accounting Office, or General Services Administration.

Section 3. Both the Employer and the Union agree that every effort will be made by both parties to resolve grievances at the lowest possible administrative level. Since the prompt settlement of these problems is desirable in the interest of sound employee-management relations, the practice of friendly discussions of problems between employees and their immediate supervisors is not only encouraged but required. Most grievances arise from misunderstandings or disputes which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level.

Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, his performance, or his loyalty or desirability to the organization. The immediate supervisor shall maintain a healthy atmosphere in which the employee can speak freely and have a frank discussion of the problem. All complaints will be given careful and unprejudiced consideration.

The Union filed a grievance on March 20, 1975 seeking a remedy for Management's alleged violation of Article 16, Sections 1 and 3 in connection with the processing of the Waller-Street grievance prior to its being heard before Arbitrator Howard Kleeb. The remedy requested was reimbursement of the arbitrator's fees and other costs of the Waller-Street arbitration; the demands were amended April 25, 1975.

In response to the grievance and in their application, the Agency denied grievability for the following reasons: (1) The issue did not involve the interpretation and application of the negotiated agreement; (2) The issue was raised before Arbitrator Kleeb and considered in his opinion and award; (3) Nowhere in the National Agreement did it provide for one arbitrator to overturn another arbitrator's decision in the same matter.

The Union responded to the application and contended the following: (1) Management conceded that the issue presented is one of contract interpretation and application; (2) Arbitrator Edgett had ruled in an earlier case that the type of conduct complained of in the present grievance would, in fact, violate the contract and his decision has become the basis for precedent; (3) Arbitrator Kleeb did not decide whether Management had violated Article 16 in his decision; (4) The remedy requested had been amended to avoid confusion as it appeared that the Union was attempting to overturn Arbitrator Kleeb's award; (5) That the Agency had no standing to file an Application under Section 205.2 of the Assistant Secretary's Regulations.

The Union asserts that, prior to the arbitration of a previous grievance, Respondent failed to provide necessary evidence to the Applicant. As a result, the Union was deprived of the opportunity to settle the grievance or prepare properly for that arbitration. The agreement between the parties provides for grievances to be processed through arbitration and that an arbitrator's award shall be binding on the parties subject to the filing of exceptions to the Federal Labor Relations Council. I find nothing in the parties contract authorizing the instant grievance. Moreover, I note that the Applicant asserted, without rebuttal by the Union, that Arbitrator Kleeb did consider the proposition argued here prior to rendering his decision; but, he nevertheless assessed costs to the Union. I find, therefore, that the issue raised in the grievance is neither grievable nor arbitrable.

With respect to the Union's contention that the Agency had no standing to file the Application, Section 205.1 of the Assistant Secretary's Regulations state that any party to an agreement or any employee or group of employees may file an Application for a Decision on Grievability. This regulation is controlling here.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceedings and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned

Assistant Regional Director as well as the other parties. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary no later than close of business July 14, 1975.

DATED: June 27, 1975

Kenneth L. Evans
Assistant Regional Director
for Labor-Management Services

Philadelphia Region

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-8-75

Mr. Raymond Byrne, Jr.
1914 Wyatt Street
Fayetteville, North Carolina 28304

617

Re: Fayetteville Chapter, Professional Air Traffic Controllers Organization, MEBA, AFL-CIO, (Federal Aviation Administration, Fayetteville Tower
Fayetteville, North Carolina)
Case No. 40-6504(CO)

Dear Mr. Byrne:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(b)(1) of the Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, in my view, the mere fact that you were denied by the Respondent labor organization the opportunity to vote on proposed changes in the watch schedule does not establish a reasonable basis for the complaint in the absence of any evidence that the Respondent has not adequately represented the interests of all employees in the unit or that the proposed changes in the watch schedule were based on discriminatory considerations.

Accordingly, and noting that the matters raised for the first time in your request for review (i.e. your assertion that the Respondent had requested management to deny a vote among all controllers) cannot be considered by the Assistant Secretary (see attached Report on Ruling of the Assistant Secretary, Report No. 46), your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

August 7, 1975

Mr. Raymond Byrne, Jr.
1914 Wyatt Street
Fayetteville, North Carolina 28304

In reply refer to: Fayetteville Chapter, Professional Air Traffic Controllers Organization (MEBA AFL-CIO)
Fayetteville, North Carolina, Case No. 40-6504(CO)

Dear Mr. Byrne:

The above-captioned case alleging a violation of Section 19(b)(1) of Executive Order 11491, as amended, has been investigated and considered carefully.

Investigation reveals that on or about May 20, 1975 a notice was posted on the bulletin board which is assigned for the use of the Professional Air Traffic Controllers Organization (PATCO) at the FAA Fayetteville, North Carolina, Air Traffic Control Tower. The notice requested that employees vote on whether they desired the watch schedule changed from 0800-1600, 1600-2400, and 0000-0800 to 0700-1500, 1500-2300, and 2300-0700. The vote was open to PATCO members only.

It is your contention that the votes taken by PATCO should have been open to all employees affected by the watch schedule and that the non-PATCO members should have been permitted to vote.

Section 10(e) of the Order provides in part that:

> When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership... (emphasis supplied)

This section grants to the exclusive representative the right to represent the unit employees and to act in their behalf. Nothing in the Order requires the exclusive representative to ascertain the views

of the unit employee before it presents proposals to management. Moreover, there is no evidence the non-union members in the unit were not fairly or adequately represented before management in the matter of the change of work shifts or that the Respondent's selection of the particular hours proposed in the notice or to management was based on discriminatory considerations.

Based on the foregoing, I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business August 22, 1975.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

cc:

Mr. E. J. Faircloth, President
Local 298, Professional Air Traffic
Controller Organization
5602 Denham Court
Fayetteville, North Carolina 28304

Mr. Hayden B. Clements
LMSA Area Director
U. S. Department of Labor, LMSA
1365 Peachtree Street, Suite 540
Atlanta, Georgia 30309

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-11-75

Mr. Larry G. Finneman
Business Representative
International Association of Machinists
and Aerospace Workers
District 160, Local Lodge 2014
2504½ Sixth Street
Bremerton, Washington 98310

618

Re: U. S. Army
Fort Lewis, Washington
Case No. 71-3453

Dear Mr. Finneman:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's denial of your request for intervention in the above-captioned case.

It is your contention that the Assistant Regional Director erred in finding that the showing of interest submitted by the International Association of Machinists, District 160, Local Lodge 2014 (IAM) was insufficient to warrant granting the IAM's request for intervention in the instant matter. In this regard, you assert that the signatures collected during the extension of the posting period should have been considered in computing the sufficiency of the IAM's showing of interest.

Under all of the circumstances, and noting particularly the extension of time granted by the Area Office to the IAM in which to submit additional showing of interest, the fact that the IAM submitted additional showing of interest within the prescribed time frame, and the absence of any agreement bar, I find that it will effectuate the purposes of the Order to consider such additional showing of interest in determining the sufficiency of the IAM's request for intervention in this matter.

Accordingly, and as I am administratively advised that the IAM has a sufficient showing of interest to support the request for intervention, your request for review is granted and the Area Director is directed to reinstate the IAM's intervention and to process the petition in accordance with the applicable Regulations of the Assistant Secretary.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

August 7, 1975

Mr. Larry G. Finneman, Business Representative
IAM District 160
2504½ 6th Street
Bremerton, Washington 98310

Re: Ft. Lewis & AFGE, LU 1504 - Case No. 71-3453

Dear Mr. Finneman:

This is to inform you that it has been determined that the request for intervention filed in the subject matter is not appropriate under the requirements of the Regulations of the Assistant Secretary. Investigation discloses that your request for intervention was not supported by a showing of interest of at least ten (10%) percent of the employees in the unit involved in the petition. I am, therefore, denying your request for intervention.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the activity and any other party. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business August 22, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director/LMSA

cc: J. D. Harvison, President
AFGE, LU 1504
9611 Gravelly Lake Drive, Suite L
Tacoma, WA 98499

Lawrence D. Sutton, Labor Relations Officer
Civilian Personnel Office
Ft. Lewis, WA 98433

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-11-75

Mr. Bernard J. Waters 619
President
Harold E. Brooks Memorial Chapter
Association of Civilian Technicians, Inc.
2765 Montauk Highway
Brookhaven, New York 11719

Re: New York Air National Guard
106th Fighter Interceptor Wing
Case No. 30-6111(CA)

Dear Mr. Waters:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case, alleging violations of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended.

I find, in agreement with the Assistant Regional Director, and based on his reasoning, that the instant complaint should be dismissed in that a reasonable basis has not been established. Cf., in this regard, Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR No. 334.

Accordingly, your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

July 18, 1975 In reply refer to Case No. 30-6111(CA)

Bernard J. Waters, President
Harold E. Brooks Memorial Chapter
Association of Civilian Technicians, Inc.
2765 Montauk Highway
Brookhaven, New York 11719

Re: New York Air National Guard
106th Fighter Intercepter Wing

Dear Mr. Waters:

The above-captioned case alleging a violation of Section 19 of the Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. You contend that the Activity's dilatory conduct in processing a grievance constitutes a violation of Sections 19(a)(1)(2)(5) and (6) of Executive Order 11491, as amended. The Activity does not dispute the fact that the grievance was filed nor does it dispute the fact that the grievance was processed in an untimely fashion.

A review of the evidence submitted in support of the complaint discloses that the grievance which gives rise to the alleged violation was not filed under a negotiated grievance procedure established by the Agency involved. An agency's failure to follow its grievance procedure or to deviate from such procedures, standing alone, does not constitute interference with any rights assured under the Order. 1/ However, unilateral conduct in failing to apply the terms and conditions of a negotiated grievance procedure may constitute a refusal to consult, confer or negotiate and thereby be violative of the Order. 2/

1/ Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR No. 334.
2/ Veterans Administration Hospital, Charleston, South Carolina, A/SLMR No. 87.

No evidence has been adduced which would form a basis to conclude nor does the complaint allege that the Activity has interfered with any rights of unit employees to be represented by their exclusive representative in accordance with Section 10(e) of the Order. No evidence has been adduced to show that the Activity engaged in formal discussions with the aggrieved pursuant to Section 10(e) without affording the exclusive representative an opportunity to be present.

Based on the above facts and noting that the grievance was filed pursuant to an agency grievance procedure, I find no basis for the 19(a)(6) allegation. Similarly, no evidence has been adduced which would form a basis to conclude that Respondent's dilatory actions were motivated by union animus or that they constituted evidence of discriminatory motivation or disparate treatment necessary to provide a reasonable basis for the Section 19(a)(1) and (2) allegation.

Although the complaint alleges a violation of Section 19(a)(5) of the Order, no such violation was alleged in the pre-complaint charge. Accordingly, I conclude that the complaint is untimely with respect to this allegation.

Having found no reasonable basis for the complaint, I am dismissing the complaint in its entirety.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business August 4, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-11-75

620

Mr. Donald M. Davis
9608 Dundawan Road
Baltimore, Maryland 21236

Re: Department of Health, Education, and Welfare
Social Security Administration
Baltimore, Maryland
Case No. 22-5983(CA)

Dear Mr. Davis:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case alleging violations of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings on your complaint are unwarranted. Specifically, I find that your pre-complaint charges relating to alleged statements by Mr. Irving Becker and the Activity's alleged refusal to grant you access to certain reports are untimely pursuant to Section 203.2(a)(2) of the Assistant Secretary's Regulations which provides that a pre-complaint charge must be filed within six months of the occurrence of the alleged unfair labor practice. Moreover, I find that the allegations in your complaint relating to Mr. James Cardwell are untimely pursuant to Sections 203.2(b)(1) and (2) of the Assistant Secretary's Regulations which, in effect, require that after the filing of a charge, a complaint may be filed after a 30 day period in which the parties are to attempt to resolve the matter informally or after a final written decision on the charge is served by the Respondent on the charging party. In the instant case, your complaint, which included your allegations involving Mr. Cardwell, was filed on June 20, 1975, only ten days after the filing of the subject pre-complaint charge and prior to any final written decision on the charge by the Respondent.

Further, I find insufficient evidence to establish a reasonable basis for the allegation in your complaint relating to Mr. William MacNeil. In this respect, it should be noted that under Section 203.6(e) of the Assistant Secretary's Regulations the burden of proof is on the Complainant at all stages of the proceeding.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

August 29, 1975

Mr. Donald M. Davis
9608 Dundawan Road
Baltimore, Maryland 21236
(Cert. Mail No. 734230)

Re: Social Security Administration
Dept. of Health, Education and Welfare
Case No. 22-5983(CA)

Dear Mr. Davis:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation reveals as follows:

On June 20, 1975, you filed a complaint alleging that the Social Security Administration, Baltimore, Maryland, violated Section 19(a)(1) and (4) of Executive Order 11491, as amended, by discriminating against you for promotion because you criticized the agency's Black Lung program. The complaint alleged that three agency officials committed the above violations as follows: Mr. James Cardwell, Commissioner, was aware of coercion by Mr. Becker and Mr. MacNeil and of promotion denials because of your criticism of the agency Black Lung program, but has done nothing; that Mr. Irving Becker, Director, Labor Relations Staff, made coercive statements in July, 1971, and subsequently made a sworn statement denying those statements; that Mr. William MacNeil, Director, Equal Opportunity and Labor Relations made coercive remarks to your union representative, Ronald MacDonald, on January 29, 1975, regarding your grievance; and finally, you allege that the activity violated the Order by refusing to grant you access to certain reports as requested.

Evidence gathered during the investigation revealed the following:

1. that portion of your complaint alleging violations by Mr. James Cardwell were not raised by your pre-complaint charge of May 13, 1975, and as such cannot be considered as part of the complaint since the Assistant Secretary has ruled that he cannot consider matters not raised by the pre-complaint charge;

2. the allegations concerning Irving Becker were untimely and cannot be considered since the Regulations of the Assistant Secretary state under Section 203.2 that a charge of unfair labor practice must be filed within six months of the occurrence; your charge was filed with the agency on May 13, 1975, and Becker's statement was signed on June 21, 1972; in fact the charge was filed even more than six months after you allegedly became aware of Becker's signed statement as indicated in both your charge and complaint; in addition, evidence indicates that matters concerning this allegation were raised through the negotiated grievance procedure and as such, cannot be considered here since Section 19(d) of the Order as affirmed by the Assistant Secretary states that issues which are raised under a grievance procedure cannot also be raised under the complaint procedure;

3. the allegations of the agency's refusal to grant you access to certain reports lacks merit since evidence reveals that this matter was raised previously through the grievance and cannot be considered here as indicated above; and further, only the exclusive representative can request such personnel reports under consultation rights granted under Section 10(e) of the Order.

Additionally, there was no evidence to support any of the above allegations that such matters denied your rights under the Order or that such action was anti-union motivated or that it discriminated against you because of your union activities or because you filed a complaint under the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20004, not later than the close of business September 15. 1975.

Sincerely yours,

Frank P. Willette

Frank P. Willette
Acting Assistant Regional Director
for Labor-Management Services

cc: Mr. F. D. DeGeorge
Associate Comm. for Management and Administration
Social Security Administration
Department of Health, Education and Welfare
Baltimore, Maryland 21235
(Cert. Mail No. 701491)

Mr. Peter A. O'Donnell
Agency/Activity Representative
Social Security Administration
Department of Health, Education and Welfare
G-2608, West High Rise Building
6401 Security Boulevard
Baltimore, Maryland 21235
(Cert. Mail No. 701492)

bcc: S. Jesse Reuben, OFLMR
Dow Walker, AD/WAO

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-16-75

621

Miss Margot Caro
333 E. Ontario Street
Apartment 1905
Chicago, Illinois 60611

Re: National Treasury Employees
Union, Chapter 10
(Internal Revenue Service
Chicago, Illinois)
Case No. 50-13004(CO)

Dear Miss Caro:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. Thus, in my view, insufficient evidence was submitted to establish a reasonable basis for the allegation that the language which was used by the Respondent in its August 1974 newsletter constituted improper interference, restraint, or coercion with respect to employee rights assured by the Order. See, in this regard, American Federation of Government Employees, Local 987, A/SLMR No. 420. Nor, in my view, would the evidence submitted in regard to an incident in June 1975 involving certain employees smoking in your presence require a contrary result.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS
CHICAGO REGION

CHAPTER 010,
NATIONAL TREASURY EMPLOYEES UNION, 1/

Respondent

and Case No. 50-13004(CO)

MARGOT CARO, An Individual,

Complainant

The Complaint in the above-captioned case was filed on December 26, 1974, in the office of the Chicago Area Director. It alleges a violation of Section 19(b)(1) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It does not appear that further proceedings are warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in this case.

It is alleged that the Respondent violated Section 19(b)(1) of the Order by inserting the following language in the August 1974 issue of the NTEU, Chapter 010 newsletter, "The N-TEU-ITIVE":

> "Those parasitic scabs who refuse to join the Union because they are too cheap to pay their fair share must be confronted!"

The Complainant argues that (1) the reference to non-members as "parasitic scabs" and (2) the concomitant exhortation to members to confront the "parasitic scabs" (presumably to importune them to become members), were jointly and severely coercive, and thus interfered with employees' rights assured under the Order.

In its Motion to Dismiss the Respondent argues, and in my view correctly, that the printing of the subject statement constituted a

1/ Hereinafter referred to as NTEU.

protected activity on the part of a labor organization. 2/ In support of its position the NTEU cites Linn vs. United Plant Guard Workers of America, Local 114, et al., 86 S. Ct. 657 (1966), 383 U.S. 53 and Old Dominion Branch No. 496, National Association of Letter Carriers, AFL-CIO, et al. vs. Austin, et al., 94 S. Ct. 2770 (1974). In agreement with the Respondent I find the cases cited to be controlling in the present matter, notwithstanding the fact that both Linn and Old Dominion dealt with State libel actions. In Linn the Court held that libel actions under State law were pre-empted by the federal labor laws to the extent that the State sought to make actionable defamatory statements in labor disputes which were published without knowledge of their falsity or reckless disregard for the truth. The statute applicable in Linn was the National Labor Relations Act (NLRA), Section 7 of which was held to protect the use of such epithets as "scab" even though the statements are erroneous and defamatory. 383 U.S. at 60-61.

The Appellant in Old Dominion published in a number of issues of its Union newspaper a "List of Scabs." The Appellees, whose names were listed, sued for libel. The Court, reflecting that Linn recognized that Federal law provides a union license to use intemperate, abusive, or insulting language without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its point, held that the Appellants were entitled to the same protection promulgated in Linn. 94 S. Ct. at 2780-1.

2/ It is further argued in the Motion to Dismiss that the Complainant failed to meet her obligation to investigate and attempt to settle informally the matter as required by the Regulations of the Assistant Secretary. Specifically, it is alleged that the Complainant's refusal to meet with representatives of the Respondent foreclosed compliance with the applicable regulations, and that the Complaint should therefore be dismissed on this basis.

I am not persuaded by the Respondent's argument in this regard. The evidence reveals only that the Complainant refused, for personal reasons, to meet with the NTEU's representatives. There was no blanket refusal to discuss the matter given, only restrictions (to telephonic or written communications) as to the means and methods to be utilized. Section 203.2(a)(4) of the Regulations provides that prior to the filing of a Complaint, "The parties involved shall investigate the alleged unfair labor practice . . . and attempt informally to resolve the matter." In my view no requirement is provided therein, either explicit or implicit, that the parties meet personally.

Although it was the NLRA that was under consideration by the Court in Linn, the same issue was before the Court, but with respect to the Order in Old Dominion, wherein the Court stated that: "Nevertheless, we think that the same federal policies favoring uninhibited, robust and wide-open debate in labor disputes are applicable here and that the same accommodation of conflicting federal and state interests necessarily follows". 94 S. Ct. at 2775-6. The Court reached this finding recognizing that the Order contains no provision correspondent to Section 8(c) of the NLRA (relied on in part by the Court in Linn). 3/

Section 7 of the NLRA and Section 1 of the Order, the Court ruled, also disposed of the Appellees' suggestion that no "labor dispute" within the meaning of Linn existed. It ruled that any publication made during the course of union organizational activity (and is arguably relevant to the organizing efforts) is entitled to the protection of Linn. The Court found further that it saw no reason to limit such protection to statements made during representation election campaigns; indeed it held to the contrary that the protection of Section 7 and Section 1 is much broader. Rejecting any distinction between union organizing efforts leading to recognition and post recognition organizing activity the Court held that: "Unions have a legitimate and substantial interest in continuing organizational efforts after recognition. Whether the goal is merely to strengthen or preserve the union's majority, or is to achieve 100% employee membership - a particularly substantial union concern where union security agreements are not permitted, as they are not here, see n.2, supra - these organizing efforts are equally entitled to the protection of Section 7 and Section 1". 94 S. Ct. at 2779 (footnote omitted).

Directly related to the matter presently before me was the Appellees' argument in Old Dominion that the Union's organizing efforts should not be afforded the protection of Linn as they constituted unlawful attempts to coerce them into joining the Union in violation of Section 19(b)(1) of the Order. Although the Court recognized that the determination of an unfair labor practice lies within the province of the Assistant Secretary, it nevertheless stated that it expected Section 19(b)(1) to be interpreted in light of the construction the Court gave the parallel provision of the NLRA, Section 8(b)(1)(A) in NLRB vs. Drivers Local 639, 362 U.S. 274, 80 S. Ct. 706. Therein the Court held that Section 8(b)(1)(A) was "a grant of power to the Board limited to authority to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof." 362 U.S. at 290. The Court went on in Old Dominion to state: "It is true

3/ Section 8(c) provides: "The expression of any views, argument, or opinion, or the dissemination thereof . . . shall not constitute or be evidence of an unfair labor practice . . . if such expression contains no threat of reprisal or force or promise of benefit."

that the Executive Order provides that a union may not 'interfere with' an employee in the exercise of his right to refrain from joining the union, as well as incorporating the wording of the NLRA making it unlawful to 'restrain' or 'coerce' an employee. The Court in Drivers Local 639 pointed out, however, that even the words 'interfere with', which originally appeared in a draft of the Taft-Hartley Act, were intended to have a 'limited application' and to reach 'reprehensible practices' like violence and threats of loss of employment, but not methods of peaceful persuasion. Id., at 286, 80 S. Ct., at 713. It seems likely that the Executive Order was similarly not intended to limit union propaganda or prohibit any other method of peaceful persuasion." 94 S. Ct. at 2779. 4/

It is my view that the situation in the present case is the same, mutatis mutandis, as that in Old Dominion; consequently, the Respondent's activities would not constitute a violation under the NLRA. While decisions under the NLRA may not be binding precedent under the Order, the Assistant Secretary has held that he will "take into account the experience gained in the private sector under the Labor-Management Relations Act." 5/ Accordingly, I do not find that any rights accorded the Complainant under the Order have been violated.

Having considered carefully all the facts and circumstances in this case, including the Charge, the Complaint, the positions of the parties and all that which is set forth above, the Complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the

4/ The Respondent in a letter dated March 5, 1975, stated that the term "confront" in the subject newsletter was intended to encourage members to challenge non-members with regard to their Union status, such challenge to include a delineation of the benefits of membership and an enumeration of cases where the Union had represented unit employees. It is neither shown nor alleged that the Respondent had engaged in or encouraged tactics involving "violence, intimidation, and reprisal or threats thereof."

5/ See Charleston Naval Shipyard, A/SLMR No. 1

Assistant Secretary for Labor Management Relations, Attention: Office of Federal Labor-Management Relations, United States Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business June 16, 1975.

Dated at Chicago, Illinois this 2nd day of June, 1975.

R.C. DeMarco

R. C. DeMarco, Assistant Regional Director
United States Department of Labor
Labor Management Services Administration
230 South Dearborn Street, Room 1033B
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

DEC 23 1975

622

Mr. John Helm
Staff Attorney
National Federation of
Federal Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: Veterans Administration
Veterans Administration Hospital
Montgomery, Alabama
Case No. 40-6562(CU)

Dear Mr. Helm:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Petition for Clarification of Unit in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the evidence establishes that the employees of the Outpatient Clinic have accreted to the existing unit represented by the American Federation of Government Employees, Local 997, AFL-CIO. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Petition for Clarification of Unit, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Veterans Administration
Veterans Administration Hospital
Montgomery, Alabama

Activity

and

Case No. 40-6562(CU)

American Federation of Government
Employees, Local 997, AFL-CIO

Petitioner

and

National Federation of Federal
Employees, Local 95

Labor Organization

REPORT AND FINDINGS

ON

PETITION FOR CLARIFICATION OF UNIT

Upon a petition for clarification of unit having been filed in accordance with Section 202.2(c) of the Regulations of the Assistant Secretary, the undersigned, after the posting of notice of petition, has completed the investigation and finds as follows:

The American Federation of Government Employees, Local 997, AFL-CIO, is the exclusive representative of the following unit of employees:

> All non-professional, non-supervisory employees of the Veterans Administration Hospital, Montgomery, Alabama excluding management officials, supervisors, employees of the personnel office other than those in a purely clerical capacity, and professionals.

The Petitioner seeks to clarify the unit to include all eligible nonprofessional employees previously employed at the Veterans Administration Regional Office Outpatient Clinic in Montgomery.

Local 95, National Federation of Federal Employees, (NFFE), was granted exclusive recognition for the following unit of employees in 1966:

> All Veterans Administration Regional Office employees, excluding managerial employees, employees engaged in personnel work in other than a purely clerical capacity, and supervisory personnel; non-supervisory professionals are included.

Included in that unit were employees of the Regional Office Outpatient Clinic.

In 1967, as part of a local reorganization of the Veterans Administration, administrative control of the Outpatient Clinic passed to the VA Hospital.

Shortly thereafter NFFE negotiated a separate contract with the Hospital for the 16 Outpatient Clinic employees. In that contract the unit was described as:

> All non-supervisory and non-professional personnel in the Outpatient Clinic of the Veterans Administration Hospital, Montgomery, Alabama.

No exclusions were specified in the agreement, which contains a clause that has provided for the annual renewal of the contract.

The Clinic employees were physically transferred to the Hospital during 1970 following the cessation of all activity at the Outpatient Clinic. Upon their transfer, the employees were reassigned throughout the Hospital. The Activity has maintained a check-off arrangement with NFFE for the former Outpatient Clinic employees, and three employees are still on dues deduction. A total of thirteen (13) of the original sixteen Outpatient Clinic employees are still employed.

Petitioner contends that the former Outpatient Clinic employees no longer constitute a separate identifiable unit. It states that the employees are so co-mingled with other Hospital employees that representation can not be effectively maintained separately.

The Activity states it has no objection to the clarification sought.

NFFE objects to the clarification sought. It claims that Outpatient Clinic personnel have been represented by it prior to and after the physical transfer of the Outpatient unit in January 1970. It takes the position that physical transfer of the Clinic did not nullify the exclusive recognition of NFFE as the bargaining agent for these employees. It states that NFFE has maintained a representative for Outpatient Clinic employees before and after physical transfer of the Clinic to the Hospital.

The thirteen former Outpatient Clinic employees include secretaries, clerk typists, a personnel clerk, and an x-ray technician. They are assigned to five different Hospital services, Pharmacy, Personnel, Medical Administration, Radiology and Prosthetics. They work alongside and share common supervision with other employees. Additionally they occupy the same job classifications and perform the same duties as other Hospital employees.

Based on the foregoing circumstances, I find that the employees formerly employed at the Outpatient Clinic when it was located at the Regional Office do not enjoy a community of interest separate and apart from the recognized unit of Hospital employees; rather, the transferred employees constitute an accretion to the currently recognized unit of Hospital employees.

In reaching the decision herein I have considered the circumstances and the rationale of the Assistant Secretary in Veterans Administration Hospital, Columbia, South Carolina, A/SLMR No. 368.

Having found that the VA Hospital employees previously employed at the Regional Office Outpatient Clinic should be accreted to the Hospital bargaining unit, the parties are advised that, absent the timely filing of a request for review of this Report and Findings, the undersigned intends to issue a Clarification of Unit ordering that the unit of all non-professional employees of the Veterans Administration Hospital, Montgomery, Alabama be clarified to include all eligible non-professional employees previously employed by the Veterans Administration Outpatient Clinic, Montgomery, Alabama.

Pursuant to Section 202.4(i) of the Regulations of the Assistant Secretary, a party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business October 28, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: October 10, 1975

Assistant Regional Director
Atlanta Region

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-23-75

623

Mr. Edward F. Mangrum
4403 Muir Avenue
San Diego, California 92107

Re: American Federation of Government Employees, AFL-CIO (Marine Corps Recruit Depot Exchange, San Diego, California) Case No. 72-5382(CO)

Dear Mr. Mangrum:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case.

In agreement with the Assistant Regional Director, I find that the instant complaint was not timely filed pursuant to the Assistant Secretary's Regulations. Thus, the matters alleged as violative of the Order occurred more than 9 months prior to the filing of the complaint in this matter. See, in this regard, Section 203.2(b)(3) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

September 22, 1975

Mr. Edward F. Mangrum
4403 Muir Avenue
San Diego, CA 92107

Re: AFGE -
Edward Mangrum
Case No. 72-5382

Dear Mr. Mangrum:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as the complaint has not been timely filed pursuant to Section 203.2 of the Regulations. In this regard, it is noted that a final decision by the Respondent was served on you on June 27, 1974 but the complaint was not filed until June 9, 1975, which is in excess of 60 days from the date of such service as required by the Regulations.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on October 7, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-23-75

624

Richard L. Mahlmeister
Vice President, Local 2221
American Federation of Government
Employees, AFL-CIO
Newark Air Force Station
Newark, Ohio 43055

Re: United States Air Force,
Aerospace Guidance and Metrology Center,
Newark Air Force Station
Case No. 53-7923(CA)

Dear Mr. Mahlmeister:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a)(1) and (5) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted inasmuch as a reasonable basis was not established for the complaint. Accordingly, and as matters raised for the first time in the request for review (i.e. your assertion that the Activity aided and abetted the filing of certain decertification petitions) cannot be considered by the Assistant Secretary (see attached Report on Ruling of the Assistant Secretary, Report No. 46), your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS
CHICAGO REGION

UNITED STATES AIR FORCE,
AEROSPACE GUIDANCE AND METROLOGY CENTER,
NEWARK AIR FORCE STATION,
NEWARK, OHIO,

Respondent

and Case No. 53-7923(CA)

LOCAL 2221, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,

Complainant

The Complaint in the above-captioned case was filed on March 12, 1975, in the office of the Cleveland Area Director. It alleges a violation of Section 19(a)(5) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall, therefore, dismiss the Complaint in this case.

It is alleged that the Respondent violated Section 19(a)(5) of the Order by delaying the approval by higher authority of the non-appropriated fund contract thereby failing to accord appropriate recognition to American Federation of Government Employees, Local 2221, the exclusive representative of the non-appropriated fund unit. The Complainant alleges that the parties brought the non-appropriated fund contract into compliance with law and regulation on December 19, 1974; however, Management delayed processing the agreement until such time as a decertification petition was filed on January 27, 1975, by an employee of the non-appropriated fund, Newark Air Force Station.

The Respondent contends that at all times the Activity has accorded appropriate recognition to the Complainant. The Respondent maintains that negotiations were held with the Complainant over the non-appropriated fund contract until such time as Management became aware that a question concerning representation had been raised with the Assistant Secretary LMSA in the latter part of January 1975.

The Complainant and Activity met on December 19, 1974, to bring the non-appropriated fund agreement into compliance with law and regulation. At the time of this meeting a decertification petition (Case No. 53-7813) involving the non-appropriate fund unit at Newark Air Force

Station was on file with the Assistant Secretary. However, the decertification petition was subsequently withdrawn, with the Assistant Regional Director's approval, on January 2, 1975. On January 6, 1975, the parties signed the minutes of the negotiation meeting held on December 19, 1974. However, the evidence submitted by the parties indicates there still remained questions concerning the dues withholding agreement and the hours of work clause in the agreement. The evidence further indicates that the parties continued to negotiate with respect to the remaining unresolved issues through January 15, 1975. On January 15, 1975, the Activity was served with a copy of a new decertification petition (Case No. 53-7856) filed by another employee of the non-appropriated fund, Newark Air Force Station. However, due to a procedural deficiency, the decertification petition was returned and subsequently refiled and docketed with the Assistant Secretary on January 27, 1975.

The Complainant argues that the Activity should have forwarded the non-appropriated fund agreement to higher authority without delay after the December 19, 1975, negotiation sessions, and that the failure to do so constituted a violation of Section 19(a)(5) of the Order. I cannot agree. The Assistant Secretary has held that it is inappropriate for Management to negotiate a collective bargaining agreement with the exclusive representative when there is a real question concerning representation of the unit. 1/ Accordingly, as a decertification petition was pending in the instant case during the period December 19, 1974 and January 2, 1975, I find that a question of representation existed during that period and thus barred the Activity from negotiating a collective bargaining agreement with the Complainant. Further, I find that although the parties signed the minutes for the December 19, 1974, negotiation session on January 6, 1975, the bargaining agreement was never finalized by the parties so that it could be forwarded to higher authority for approval. Accordingly, and noting that insufficient evidence has been presented to show that the Activity unduly delayed negotiations on an agreement for the purpose of allowing the timely filing of the decertification petition, I find that the instant Complaint is without merit. 2/

1/ See Federal Aviation Administration, Atlanta Airway Facility, Sector 12, Atlanta, Georgia, A/SLMR 287, and Department of the Army Directorate, United States Dependent Schools, European Area (USDESEA) APO New York, A/SLMR No. 138.

2/ Although the Complaint alleges a violation of Section 19(a)(5), the alleged delay in processing the collective bargaining agreement is more correctly a theory of a 19(a)(6) violation and I have thus considered it as a 19(a)(6) allegation.

Having considered carefully all of the facts and circumstances in this case, including the charge, the Complaint, the positions of the parties, and all that which is set forth above, the Complaint in case number 53-7923(CA) is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a Request for Review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the Request for Review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor Management Relations, Attention Office of Federal Labor Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business August 28, 1975.

Dated at Chicago, Illinois, this 13th day of August, 1975.

R. C. DeMarco
Assistant Regional Director
U. S. Department of Labor, LMSA
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-23-75

625

Ms. Barbara Wood
Route 5, Box 58V
Austin, Texas 78749

Re: Veterans Administration Data
Processing Center
Austin, Texas
Case No. 63-4708(DR)

Dear Ms. Wood:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your decertification petition in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the subject petition, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

August 21, 1975

In reply refer to: 63-4708(DR)
VA Data Processing Center/NFFE
IU 1745, Austin, Texas

Mr. James L. Howell
1105 Cripple Creek
Austin, Texas 78758

Certified Mail #201706

Dear Mr. Howell:

This is to inform you that further proceedings with respect to the petition in the subject matter are not warranted.

In A/SLMR 523, the Assistant Secretary for Labor-Management Relations found that an activity supervisor participated in the solicitation of the showing of interest in the instant petition. Thereafter, this office caused an investigation of the adequacy and validity of that showing of interest to be conducted. The investigation revealed that the extent of management involvement has sufficiently invalidated the showing of interest in the instant petition so that it has ceased to adequately support the petition.

Based on the foregoing, and pursuant to the authority vested in me by the provisions of Section 202.6 of the Assistant Secretary's Rules and Regulations, I hereby dismiss the instant petition in its entirety.

In view of the aforementioned investigation and resultant dismissal, I find it unnecessary to rule on the Motion to Dismiss filed by National Federation of Federal Employees, Ind., Local Union 1745, Legal Counsel, Janet Cooper, dated October 1, 1973, renewed on June 27, 1975.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216. A copy of the request for review must be served on the Assistant Regional Director as well as the activity and any other party. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business September 5, 1975.

Sincerely,

Edmund L. Burke
Acting Assistant Regional Director
for Labor-Management Services

cc: Mr. C. B. Drinkard, Director
Veterans Administration Data Processing Center
1615 East Woodward Street
Austin, Texas 78772 Certified Mail #201707

Mr. Norman E. Jacobs
Labor Relations Specialist
Veterans Administration Central Office
810 Vermont Avenue, N.W., Room 1144
Washington, D. C. 20005 Certified Mail #201708

Mr. Glen J. Peterson
National Representative
American Federation of Government Employees
P. O. Box BB
Boerne, Texas 78006 Certified Mail #201709

Ms. Janet Cooper
Staff Attorney
National Federation of Federal Employees
1737 H Street, N. W.
Washington, D. C. 20006 Certified Mail #201710

Mr. Steve Mireles, President
National Federation of Federal Employees
Local Union 1745
Veterans Administration Data Processing Center
1615 East Woodward Street
Austin, Texas 78772 Certified Mail #201711

Mr. Oscar E. Mas[illegible]s
Area Director
U. S. Department of Labor
Labor-Management Services Administration
555 Griffin Square Building, Room 501
Griffin & Young Streets
Dallas, Texas 75202

626

William K. Holt, President
Bremerton Metal Trades Council
P.O. Box 448
Bremerton, Washington 98310

DEC 2 8 1975

Re: Puget Sound Naval Shipyard
Bremerton, Washington
Case No. 71-3480(GR)

Dear Mr. Holt:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

In agreement with the Assistant Regional Director, I find that the grievance herein is not on a matter subject to the negotiated grievance procedure. In this regard, it was noted that neither party contends that the assignment of parking spaces was covered by the agreement. Therefore, Article XXIX, Section 1, would preclude the processing of this grievance under the negotiated procedure. In addition, assuming that the reassignment of parking could be considered under certain circumstances disciplinary in nature and, therefore, grievable under Article XIX, I concur with the Assistant Regional Director's finding that you failed to establish a reasonable basis upon which to find that the reassignment herein was, in fact, disciplinary.

Accordingly, and noting that matters raised for the first time in a request for review may not be considered by the Assistant Secretary - i.e. your contention that Wakely was treated differently than five other employees - your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

PUGET SOUND NAVAL SHIPYARD DEPARTMENT OF THE NAVY BREMERTON, WASHINGTON -ACTIVITY	)	
-AND-	)	CASE NO. 71-3480
BREMERTON METAL TRADES COUNCIL BREMERTON, WASHINGTON -APPLICANT	)	

REPORT AND FINDINGS

ON

AN APPLICATION FOR DECISION ON GRIEVABILITY

On July 21, 1975, the Bremerton Metal Trades Council, hereinafter referred to as Applicant, filed an Application for Decision on Grievability in accordance with Section 206 of the Regulations of the Assistant Secretary. The undersigned has caused an investigation of the facts to be made and finds as follows:

The Applicant and the Puget Sound Naval Shipyard, Bremerton, Washington, hereinafter referred to as the Activity, were parties to a labor-management agreement effective on June 23, 1972, and extended through June 20, 1975. The Applicant seeks a decision as to whether a grievance concerning reassignment of a parking place is grievable under the now expired 1972 agreement. The current agreement became effective on June 20, 1975, and remains in effect until February 15, 1977.

On April 26, 1974, the Commander of the Shipyard issued NAVSHIPYDPUGET Instruction 5560.8C establishing a system for the allotment of parking spaces to qualified car pools. Under the regulations and criteria set forth in this Instruction, Loman Wakely, a Shipyard employee, was assigned parking space 368-1.

On May 5, 1975, in violation of the Activity's regulations, Wakely moved his automobile from his assigned space to another area within the Shipyard. For this infraction, Wakely received a letter of caution which the parties agree was appropriate discipline.

Thereafter, on May 9, 1975, Wakely was notified by the Activity's parking coordinator that his allocated parking space was being changed. The stated reason for this change was that the initial parking space assignment had been made on the basis of an erroneous computation of Wakely's military and federal civil service time and that the reassignment was for the purpose of correctly allocating parking space by seniority.

The 1972 negotiated agreement provides, in pertinent part:

Article XIX - Disciplinary Actions and Letters of Reprimand

> Section 1. Disciplinary actions will be taken only for just cause. In all cases of proposed disciplinary actions the employee will be given the opportunity to reply to the charges, orally or in writing, using the assistance of Council representatives as desired. If the employee alleges, after such action is taken, that charges were untrue, facts misrepresented, or the penalty too severe, he may appeal the decision.
>
> Section 7. When an employee is advised of his appeal rights on disciplinary actions and letter of reprimand, he shall be advised of his appeal rights in Article XXIX of this Agreement.

Article XXIX - Grievance Procedure

> Section 1. This article provides for an orderly and sole procedure for the processing of employee, employer, and Council grievance as set forth in Executive Order 11491, as amended. Grievances to be processed under this article, shall pertain only to the interpretation or application of express provisions of this Agreement. The grievance procedure, Section 4, does not cover any other matters, including matters for which statutory appeals procedures exist. Questions as to the interpretation of published agency policies or regulations, provisions of law, or regulations of appropriate authorities outside the agency shall not be subject to the negotiated grievance procedure regardless of whether such policies, laws or regulations are quoted, cited, or otherwise incorporated or referenced in the agreement.

Wakely grieved the reassignment in a timely manner at the informal step of the negotiated grievance procedure, and, on May 14, 1975, received a rejection of his grievance. He pursued the matter through step 3 of the grievance procedure and at each step was advised that the matter was not grievable under this procedure because it was not covered by the contract. Thereafter, the Application herein was filed on July 21, 1975.

The Activity, during the processing of the grievance and this application, has stated that Wakely was mistakenly credited with approximately 22 years combined military and civilian service, when, in fact, his total service time was less than eight years and that this error was discovered through a review of his parking permit at the time of the May 5, 1975, infraction.

The Activity asserts the grieved reassignment of parking space was for the purpose of assigning to Wakely a parking space on the basis of his actual seniority and was not the imposition of additional discipline for the May 5, 1975, incident which it contends is a separate and distinct event.

The Applicant, while not disputing the assertion that Wakely's combined military and civilian service time more closely approximates eight years than 22 years, asserts that the reassignment of Wakely's parking space was performed as additional discipline for having moved his automobile on May 5, 1975, in violation of Shipyard regulations. The Applicant contends that since disciplinary actions are dealt with specifically in the agreement and are normally appealed through the negotiated grievance procedure, the reassignment, as discipline, is grievable. However, the Applicant has presented no evidence in support of this assertion other than the apparent juxtaposition of the May 5 and 9, 1975, incidents.

There is no contention by the parties that the allotment of parking spaces is covered by the agreement; accordingly, Article XXIX, Section 1, would preclude consideration of a grievance in this regard under the negotiated procedure in the agreement. Alternatively, if the reassignment of parking spaces were construed as a disciplinary action, it would appear to be a matter covered by Article XIX of the agreement and, therefore, grievable.

The undersigned is of the opinion the Applicant has not established a reasonable basis to conclude that the reassignment of Wakely's parking space was undertaken as a form of discipline.[1/] In this regard, it is unrefuted that Wakely had been credited with greater seniority than was warranted.

Moreover, it is reasonable to conclude, absent evidence to the contrary, that this error was discovered, as contended by the Activity, during a routine review of Wakley's parking permit following the May 5, 1975, infraction and the resultant reassignment was for the purpose of correcting the erroneous parking space assignment. In these circumstances, and notwithstanding the casual temporal relationship between the May 5 and 9, 1975, incidents, the undersigned concludes the grievance is not on a matter covered by the negotiated agreement and, accordingly, finds that it is not grievable under the agreement.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other party. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on October 30, 1975.

Labor-Management Services Administration

Dated: October 16, 1975

GORDON M. BYRHOLDT, Assistant Regional Director
San Francisco Region, U. S. Department of Labor
450 Golden Gate Avenue, Room 9061
San Francisco, California 94102

1/ It is not impermissible for the undersigned, as a basic part of his decisional process, to establish what he considers an appropriate standard of proof. Federal Employees Metal Trades Council, Vallejo, CA, FLRC No. 73A-20.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-23-75

627

Mr. H. L. Erdwein
National Representative,
American Federation of Government Employees
AFL-CIO
300 Main Street
Orange, New Jersey 07050

Re: Veterans Administration Hospital
Montrose, New York
Case No. 30-6183(RO)

Dear Mr. Erdwein:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the representation petition in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, the evidence established that at the time the subject petition was filed there was a negotiated agreement in effect which constituted a bar to an election.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant petition is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

October 3, 1975 In reply refer to Case No. 30-6183(RO)

Joseph D. Gleason, National Vice President
American Federation of Government Employees
AFL-CIO, Local 2440
300 Main Street
Orange, New Jersey 07050

Re: Veterans Administration Hospital
Montrose, New York

Dear Mr. Gleason:

The petition filed in the above captioned case has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as the petition was not timely filed in accordance with Section 202.3(c) of the Regulations of the Assistant Secretary.

A collective bargaining agreement between the Activity and the incumbent exclusive representative was executed on July 25, 1972 and became effective September 12, 1972. The termination date was two years from its effective date, which would be September 11, 1974, with a provision for a two-year automatic renewal. Renewal of the agreement would result in an agreement effective September 12, 1974, terminating on September 11, 1976. Thus, the open period for filing a petition, absent unusual circumstances, would be during the period June 13, 1976 through July 13, 1976.

On July 9, 1974, Petitioner had filed a petition seeking to sever from an existing "mixed" unit of guards and non-guard employees, all of the non-guard employees. By decision dated February 4, 1975, the Assistant Secretary severed the non-guard employees from the existing unit and directed an election. 1/

1/ Veterans Administration Hospital, Montrose, New York, A/SLMR No. 484.

Joseph D. Gleason, Nat'l. Vice Pres.
AFGE, AFL-CIO, Local 2440 Case No. 30-6183(RO)

On the basis of the investigation, it has been determined that no question of representation ever existed with respect to the employees classified as guards, no negotiations were ever entered into by the Activity and the incumbent Exclusive Representative to negotiate a new agreement for the guard employees and neither party contends that the existing agreement has terminated with respect to the guard employees.

Accordingly, I conclude that the collective bargaining agreement executed on July 25, 1972 automatically renewed itself for a duration of two years on September 12, 1974. As the petition in the instant case was filed on May 15, 1975, it is untimely since the "open" period does not begin to run until June 13, 1976. 2/

I am, therefore, dismissing the petition.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business October 20, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

2/ The mere fact that non-guard employees were severed from the "mixed" unit is not a sufficient basis to conclude that unusual circumstances exist, hence Section 202.3(c)(3) of the Regulations is not applicable in the instant case.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
12-23-75

628

Mr. Gerald Tobin
Staff Attorney
National Federation of Federal
Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: U. S. Department of the Army
U. S. Army Electronics Command
Fort Monmouth, New Jersey
Case No. 32-4014(CA)

Dear Mr. Tobin:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Thus, I find that the Respondent was under no obligation to meet and confer concerning its decision to remove a xerox machine. Moreover, with regard to Respondent's obligation to meet and confer on the impact of such decision, it was noted that the Respondent did, in fact, meet and discuss the impact of its decision on unit employees and advised the exclusive representative that no unit employees would be adversely affected. And, in this latter regard, it was noted that no evidence was presented by the Complainant demonstrating that any unit employee was or would be adversely affected by the removal of the xerox machine.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

September 16, 1975 In reply refer to Case No. 32-4014(CA)

Herbert Cahn, President
National Federation of Federal Employees (Ind.)
Local Union 476
P.O. Box 204
Little Silver, New Jersey 07739

Re: U.S. Army Electronics Command
Fort Monmouth, New Jersey

Dear Mr. Cahn:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The Union alleges that the Respondent Activity violated Section 19(a)(6) and (1) in that it refused to consult and confer with the union with regard to impact on jobs of represented employees in the Pictorial Audio Visual Branch, as the result of a planned shutdown of reproduction machines. 1/ The Respondent answers the charge by stating that it did consult and confer concerning the impact of the removal of a single Xerox brand machine. The Respondent insists further that the requirement to consult and confer is moot because there was no impact upon the unit employees by the removal of one (1) Xerox machine. The Activity says that its decision was based entirely upon the underutilization of that machine, which, in turn, was the result of an earlier diminution of production.

1/ Section 12(b) of the Order provides, in part, that management officials retain the right "to determine the methods, means and personnel by which such operations are to be conducted". While the decision to shutdown the xerox machine is, in my view, a matter upon which there is no obligation to meet and confer and/or consult, such reserved decision making authority does not relieve Respondent of its obligation to meet and confer, to the extent consonant with law and regulations, on the impact of such decision on employees adversely affected.

A review of the evidence submitted discloses that Respondent met with representatives of Complainant on March 19, 1975 to discuss its decision to shutdown the xerox machine. There is no dispute among the parties that Respondent, during the meeting, explained its reasons for the shutdown, verbally furnished facts in support of its position and told Complainant's representatives that there would be no impact on unit employees who operated the xerox machines since they would continue to handle the existing workload using three instead of four machines. Complainant's representatives felt that an analysis by a disinterested or more objective party might prove otherwise and requested to personally review the workload data before agreeing that no personnel would be affected. Respondent contended that such a review was not necessary.

Since the parties could not reach agreement, the meeting was adjourned. The pre-complaint charge was filed the next day.

No evidence has been adduced which would form a basis to conclude that Respondent's decision had any adverse impact on the unit employees involved. To the contrary, the evidence demonstrates that there has been no change in the number of unit employees assigned to the xerox machines. Statistical data from Respondent discloses the machines on hand, prior to the Respondent's decision to remove one, were severely underutilized. 2/ No evidence has been adduced that production had diminished because of the removal of the machine, nor is there any evidence that work has become more difficult because of the shutdown and removal or that employees have had to work harder. Finally, although you suggest that the unit can no longer respond adequately to customer requests, no evidence has been adduced to support your conclusion.

I must conclude from the foregoing that you have failed to establish a reasonable basis for your complaint.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant

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2/ The verbal statistical data furnished to Complainant's representatives at the meeting on March 19, 1975 was essentially the same.

Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business October 2, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

Dec. 29, 1975

Mr. Paul Arca
Acting Staff Director
Bureau of Operations
Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235

629

Re: Department of Health, Education, and Welfare
Social Security Administration
Bureau of District Office Operations
San Francisco Region
Case No. 70-4599(GA)

Dear Mr. Arca:

I have considered carefully the request for review in the above-captioned case, seeking reversal of the Report and Findings on an Application for Decision on Arbitrability of the Assistant Regional Director.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the matter raised in the instant grievance regarding whether the Activity complied with Article 7, Section D of the parties' negotiated agreement is arbitrable under the agreement and is not covered by a statutory appeal procedure. Therefore, such matter should be resolved through the negotiated grievance-arbitration machinery. Accordingly, and noting the absence of any evidence that the Activity was prejudiced by the Applicant's alleged failure to serve the Activity with a copy of its reply to the Activity's response to the Application, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Relations, Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 9061 Federal Office Building, 450 Golden Gate Avenue, San Francisco, California 94102.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE SOCIAL SECURITY ADMINISTRATION BUREAU OF DISTRICT OFFICE OPERATIONS SAN FRANCISCO, CALIFORNIA	-ACTIVITY	CASE NO. 70-4599
-AND-		
AFGE COUNCIL OF DISTRICT OFFICE LOCALS, AFL-CIO	-LABOR ORGANIZATION/ APPLICANT	

REPORT AND FINDINGS

ON

AN APPLICATION FOR DECISION ON ARBITRABILITY

On January 3, 1975, the Council of District Office Locals, American Federation of Government Employees, herein referred to as the Applicant, filed an application under Section 205 of the Rules and Regulations of the Assistant Secretary requesting a decision as to whether a grievance is on a matter subject to arbitration under an existing agreement. The undersigned has caused an investigation of the facts to be made and finds as follows.

The Applicant is the exclusive representation for a unit of employees of Department of Health, Education and Welfare, Social Security Administration, Bureau of District Office Operations, herein referred to as the Activity. The current negotiated agreement between the parties became effective September 27, 1973, and expires on December 26, 1975.

The facts, which are not in dispute, indicate that on June 24, 1974, the Activity notified probationary employee Edna Toll, a service representative trainee (GS-4), that her employment would be terminated effective July 9, 1974. By letter dated July 3, 1974, the Applicant proposed informally that Toll be retained until September 2, 1974, before a final decision was made regarding her termination or retention. On July 8, 1974, Toll filed a grievance under the negotiated procedure which asserts:

> Several reviews of my workload were maintained in my 7B extension file without my knowledge, without my being given a copy beforehand and without my being allowed to add my comments in violation of my rights under agreement." 1/

1/ Article 7, Section D2 of the negotiated agreement reads: "The SF-7B extension file contains, among other documentation maintained in accordance with applicable HEW and SSA directives, records on both good and bad job performance or conduct of the employee. When such records are maintained, each record will be discussed with the employee at the time it is made and the employee's response, if any, will be recorded and included in the file. This file will be purged annually in February in accordance with the applicable directives."

Toll sought the following remedy:

> Removal of documentation from 7B file. Reversal of decision of June 24, 1974, to terminate which was based on this improperly maintained documentation.

The Activity denied the grievance by letter dated July 12, 1974, in which it stated in pertinent part:

> I find your grievance inappropriate since, as a probationary employee, you were subject to termination regardless of the maintenance of the 7B file. Further, as a separated employee, you are no longer covered by the Agreement.

The Applicant by letter dated July 22, 1974 filed the grievance, the substance of which remained unchanged at the third step of the negotiated grievance procedure. The Activity by letter dated July 26, 1975, denied the grievance on the same procedural grounds as set forth in its July 22, 1974, denied.

The Applicant on September 23, 1974, filed an Application For Decision on Grievability in Case No. 70-4432 as a result of the Activity's rejection of the grievance. The Activity responded by letter dated October 1, 1974, in which it stated it would review and answer the grievance under the negotiated grievance procedure. Thereupon, a withdrawal of the application by Applicant was approved by the undersigned on October 7, 1974.

By letter dated October 11, 1974, the Activity responded to the grievance, stating in pertinent part:

> I find the materials in Ms. Toll's SF-7B file to be maintained in accordance with the Master Agreement. I find no violation of Article 7, Section D. Accordingly, the grievance and all relief requested is denied.
>
> If you are not satisfied with this decision, you may have the Council refer the matter to arbitration in accordance with Section G of Article XXV and Article XXVI of the Mater Agreement. 2/

2/ Article 25, Section G of the negotiated agreement reads: "Arbitration: If the employee is dissatisfied with the decision in Step 3, the Council or the BDOO Region may refer the matter to arbitration, as provided in this Agreement, provided such appeal is made within ten (10) workdays of the decision in Step 3."

Article 26 of the negotiated agreement reads, in pertinent part: "Section A. Arbitration may be invoked only by the parties to resolve grievances or issues that are not settled otherwise. . .
"Section H. The arbitrator shall be instructed to render his decision as soon as possible; that this decision shall not extend to the content of this Agreement or policy or proposed changes in policy; that the decision be limited to the stipulated issue(s) concerning a matter over the interpretation or application of provisions of this Agreement; and that the decision shall not add to, subtract from, or modify the terms of this Agreement.
"Section I. The arbitrator's award shall be binding. However, either party may file exceptions to an award with the Federal Labor Relations Council, under regulations prescribed by the FLRC."

On October 22, 1974, the Applicant filed a Demand for Arbitration with the American Arbitration Association.

By letter dated November 12, 1974, the Activity made an offer of settlement to the Applicant in which it stated inter alia that if the offer was unacceptable, the parties should proceed to arbitration after drafting the issues to be submitted. Additionally, by letter dated November 15, 1974, the Activity detailed five issues it felt constituted the elements to be answered by an arbitrator.

The Applicant refused the Activity's settlement offer by letter dated December 3, 1974, and stated it wished to proceed to arbitration, defining the sole arbitrable issue as:

> Did management maintain or fail to maintain records on good or bad conduct or job performance of employee Edna Toll in violation of her rights under Article 7, Section D of the General Agreement?

By letter dated December 11, 1974, the Activity declared the issue stated in the Applicant's December 3, 1974, letter not to be arbitrable. On January 3, 1975, the Applicant filed its application requesting the Assistant Secretary to decide whether the grievance is on a matter subject to arbitration under the existing agreement.

It is the Activity's position that the issue, as presented by the Applicant is not arbitrable. The Activity argues:

1. Article 7 specifically addresses "employee" rights and responsibilities, rather than "employer" rights and responsibilities, regarding the documentation of employee conduct and performance in SF-7B files. The criteria for management's maintenance of the SF-7B files are derived from materials outside the contract, and thus should be excluded from the negotiated grievance/arbitration procedures by Section D of Article 25. 3/

2. The grievance is an attempt to review through arbitration the termination of probationary employee Edna Toll, which is not arbitrable because:

   a. Section 13(b) of Executive Order 11491, as amended, limits arbitration to grievances over the interpretation or application of the agreement and not over other matters 4/ and the parties' negotiated agreement does not contain provision for review of probationary terminations. Nor was it the intent of the parties at the negotiating table to review probationary terminations.

3/ Article 25, Section D reads: "Exclusions: Questions involving the interpretation of published agency policies or regulations, provisions of law, or regulations of appropriate authorities outside the discretion of the Regiona Representative shall not be subject to this grievance procedures, even if such policies, law, or regulations are quoted, paraphrased, cited, or otherwise in corporated or referenced in this Agreement."
4/ Section 13(b) of the Order reads in pertinent part: "A negotiated procedure may provide for the arbitration of grievances over the interpretation or application of the agreement. but not over any other matters.
5/ The negotiated agreement mentions probationary employees only in Article 24, Section F, which reads: "Probationary employees should be given reasonable notice when their services are to be terminated."

b. Section 13(a) of the Order provides that matters for which statutory appeals exist may not be covered in a negotiated procedure. 6/ Federal Personnel Manual 315, Subchapter 8, prescribed the probationary employee appeal procedures to the Civil Service Commission and limits appeals to those based on discrimination because of race, color, religion, sex, national origin, partisan political reasons, marital status, or improper discrimination because of physical handicap. 7/

c. A separated, probationary employee is allowed a limited statutory appeal which is excluded from negotiated arbitration procedures. The effect of allowing a probationary termination to be reviewed on grounds other than those provided by law or Civil Service regulation would be to give a probationary employee greater rights than a tenured employee. This result is violative of good personnel practices which provide for increased rights with tenured status.

The Applicant argues that probationary employees are members of the bargaining unit and have the right to file grievances and asserts that the SF-7B file of probationary employee Edna Toll was kept in violation of Article 7, Section D of the negotiated agreement. 8/

6/ Section 13(a) of the Order reads in pertinent part: "An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances over the interpretation or application of the agreement. A negotiated grievance procedure may not cover any other matters, including matters for which statutory appeals procedures exist, and shall be the exclusive procedure available to the parties and the employees in the unit for resolving such grievance." It is noted that both Section 13(a) and 13(b) of the Order were amended by E. O. 11838, effective May 7, 1975. However, it is concluded that the amendments cannot be applied retoactively to the instant application. Federal Aviation Administration, FLRC No. 71A-33, FLRC No. 71A-44, FLRC No. 71A-53.

7/ FPM 315, Subchapter 8, Section 8-4.a.(5) and (6) read in pertinent part: "(5) An employee covered by this paragraph may appeal to the Comission on the grounds that his termination was based on discrimination because of race, color, religion, sex, or national origin . . . "(6) An employee covered by this paragraph may appeal to the Commission a termination not required by law which he alleges was based on partisan political reasons or marital status, or a termination which he alleges resulted from improper discrimination because of physical handicap. . ."

8/ Article 2, Section B of the negotiated agreement described the unit as: "All General Schedule (GS) employees in Region IX (San Francisco Region) Bureau of District Office Operations, Social Security Administration, Department of Health, Education, and Welfare excluding management officials, supervisors, guards, professionals, employees engaged in Federal personnel work in other than a purely clerical capacity, confidential employees, NYC, WIN, Work-Study employees and employees in District and Branch Offices at Phoenix, Redding, and Long Beach."

The Applicant answers the arguments raised by the Activity by asserting:

1. Management responsibilities are both explicitly and implicitly contained in Article 7 of the negotiated agreement. Responsibility for maintenance of the SF-7B file clearly falls on management. Thus, the request for arbitration regarding the Activity's alleged violation of Article 7 is arbitrable.

2. The grievance is over the interpretation or application of Article 7 of the contract. The propriety of the relief sought is a matter for the arbitrator to decide and not a matter currently before the Department of Labor. Neither the lack of a provision in the negotiated agreement for a review of probationary terminations, nor the alleged intent of the parties regarding probationary terminations is relevant since the instant grievance is an alleged violation of Article 7 of the agreement, rather than a request for a review of a probationary employee termination.

3. Tenured employees have the same rights under the contract to have violations of rights granted by Article 7 of the negotiated agreement reviewed as do probationary employees. An employee, either probationary or tenured, who was not being terminated would be allowed to have arbitrated the merits of a grievance alleging a violation of Article 7. To hold that an employee is not entitled to such a review when he is being terminated is to make the amount of review avilable inversely proportional to the harm done.

In agreement with the Applicant, I find to be arbitrable the issue of whether management maintained or failed to maintain records on good or bad conduct or job performance of employee Edna Toll in violation of her rights under Article 7, Section D of the General Agreement.

I initially note there is no contention or indication that probationary employees have no right to process grievances concerning alleged violations of the agreement through the negotiated grievance procedure. In this regard, see Department of the Navy, Naval Air Systems Command, Bethpage, N.Y., Request for Review No. 469.

It is my finding that Article 7 of the contract is not excluded from the negotiated grievance/arbitration procedure by Section D of Article 25 of the contract. A review of Chapter IX, SSA Guide 1-4 which states the policy and establishes procedures to be followed in the maintenance and disposal of employees' personnel records and files used by and authorized for operating and administrative levels in SSA, reveals that implementation of the policy and of the procedures is by regulations emanating from local authority and thus is not restricted by Section D of Article 25 of the contract. 9/

9/ Chapter IX, SSA Guide 1-4 reads in part: "Implementing instructions for th establishment of the SF-7B and the SF-7B extension file system will be issued by bureaus and offices which have a need for such employee records within their organization. As a minimum, these instructions will define the level at which the file will be maintained, establish responsibility for insuring adherence to policy and procedure, and indicate whether the file is to be maintained for only a limited number or for all employees in a component."

Additionally, I disagree with the position presented by the Activity that the issue in the instant case is not whether the employee's files were properly maintained but rather whether an arbitrator may hear a case relating to the termination of a probationary employee. I find that the subject matter of the grievance is limited to whether or not Article 7, Section D of the negotiated agreement has been violated and not the termination of Edna Toll.

Thus, I conclude, the instant grievance involves a matter subject to the grievance procedure contained in the parties' negotiated agreement inasmuch as the issue in the instant grievance involves the interpretation and application of Article 7, Section D of the negotiated agreement and should be resolved through this procedure.

It is noted that the parties have not presented any evidence to indicate that Article 7, Section D of the negotiated agreement is exempt from arbitration because of the intent of the parties or because of the existence of a statutory appeals procedure.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of these findings by filing a request for a review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on July 21, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

GORDON M. BYRHOLDT
Assistant Regional Director
San Francisco Region
U. S. Department of Labor
Room 9061, Federal Building
450 Golden Gate Avenue
San Francisco, California 94102

Dated: July 8, 1975

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

JAN 7 1976

630

Mr. Jose L. Ruiz
8420 Signal Peak
El Paso, Texas 79904

Re: Jose L. Ruiz, Complainant
Local RI4-22, NAGE, Respondent
File 63-5619(14)

Dear Mr. Ruiz:

I have carefully considered your request for review of the Assistant Regional Director's dismissal of your April 24, 1975, complaint in case number 63-5619 brought under the Bill of Rights provisions of the Regulations implementing Section 18, Standards of Conduct, of Executive Order 11491.

The Assistant Regional Director stated in his dismissal letter that the action of National Association of Government Employees President Kenneth T. Lyons on February 21, 1975, ordering you reinstated to membership and to your position as a shop steward was an effective settlement of your complaint. You disagree stating you were subsequently tried again on the same charges and again dropped from the union and taken off dues deduction by letter of August 26, 1975. You enclosed a copy of your appeal to President Lyons regarding your second expulsion.

I am in agreement with the Assistant Regional Director that your April 24, 1975, complaint had been remedied by your reinstatement. Any allegations regarding your second expulsion can only be raised in a new complaint filed pursuant to sections 204.54 through 204.56 of the Regulations if you do not achieve a satisfactory resolution of your complaint through your pending internal union appeal.

You also alleged in your request for review that the Assistant Regional Director did not give adequate consideration to the five

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

JAN 7 1976

Mr. Jose L. Ruiz
8420 Signal Peak
El Paso, Texas 79904

Re: Jose L. Ruiz, Complainant
Local R14-22, NAGE, Respondent
File 63-5619(14)

Dear Mr. Ruiz:

I have carefully considered your request for review of the Assistant Regional Director's dismissal of your April 24, 1975, complaint in case number 63-5619 brought under the Bill of Rights provisions of the Regulations implementing Section 18, Standards of Conduct, of Executive Order 11491.

The Assistant Regional Director stated in his dismissal letter that the action of National Association of Government Employees President Kenneth T. Lyons on February 12, 1975, ordering you reinstated to membership and to your position as a shop steward was an effective settlement of your complaint. You disagree stating you were subsequently tried again on the same charges and again dropped from the union and taken off dues deduction by letter of August 26, 1975. You enclosed a copy of your appeal to President Lyons regarding you second expulsion.

I am in agreement with the Assistant Regional Director that your April 24, 1975, complaint had been remedied by your reinstatement. Any allegations regarding your second expulsion can only be raised in a new complaint filed pursuant to sections 204.54 through 204.56 of the Regulations if you do not achieve a satisfactory resolutioh of your complaint through your pending internal union appeal.

You also alleged in your request for review that the Assistant Regional Director did not give adequate consideration to the five

requests for remedial action that you made in your complaint. Two of your requests for remedial action concerned the payment of monetary damages and such payments are not within the scope of available remedies under Executive Order 11491. The two matters that you list as conflicts of interest are not appropriate for consideration in a Bill of Rights complaint because they do not involve a violation of any rights granted union members in the Bill of Rights. The charges that you made against various management officials are likewide not appropriate for consideration in a Bill of Rights complaint because the Bill of Rights only protects union members from the denial of certain rights by their union.

In your request for review you objected becuase you did not receive a copy of the answer to the letter dated May 28, 1975, from Mr. Oscar E. Masters, Dallas Area Director of the Labor-Management Services Administration, to the President of NAGE Local R14-22 requesting the local's position regarding you complaint. You did not receive a copy of an answer because the union never responded to the letter. You also objected because you were not provided a copy of the recommendations made by the Area Director to the Assistant Regional Director. Such intra-agency memorandums are by law exempt from disclosure to the public.

You also raised the question of your right to run for office. Any complaint regarding a union election must be filed in a separate action in accordance with section 204.63 of the Regulations which requires that a union member may file a complaint within one calendar month after having exhausted the remedies available under the constitution and bylaws of the labor organization or having invokes such available remedies without obtaining a final decision within three calendar months.

Threefore, for the above reasons, I concur with the decision of the Assistant Regional Director. Accordingly, your request for reversal of the Assistant Regional Director's dismissal of your complaint is denied.

Sincerely yours,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Enclosure

October 3, 1975

Mr. Jose L. Ruiz
8420 Signal Peak
El Paso, Texas 79904

Certified Mail #936747

Ref: Jose L. Ruiz, Complainant
Local R14-22, NAGE, Respondent
File 63-5619 (14)

Dear Mr. Ruiz:

On April 24, 1975, you filed a complaint with our Dallas Area Office pursuant to Part 204, Section 204.53, of the Rules and Regulations (hereafter Regulations) of the Assistant Secretary of Labor for Labor-Management Relations. Your complaint included details which you alleged constituted violations, and included a statement of procedures invoked to remedy the situation, including dates, and a copy of a written decision obtained through internal procedures. Further, you included a statement of service on the respondent, Local R14-22, National Association of Government Employees (NAGE).

In your complaint, you related that charges of violating the Agreement between Local R14-22, NAGE and U. S. Army Air Defense Center and Ft. Bliss, Ft. Bliss, Texas were filed against you, purportedly consistent with internal union procedures, on September 23, 1974, subsequently withdrawn, and refiled on October 9, 1974. You were tried on October 22, 1974 and November 8, 1974, before a 3-member trial board which included Mr. C. E. Chavez, your accuser, who acted as chairman of the trial board, prosecutor for the local, and prosecution witness. You asserted the trial board was appointed by Mr. Chavez, President of Local R14-22, and not elected according to provisions of the NAGE Constitution and By-laws. On November 15, 1974, you were notified of the trial board's decision to suspend you from membership in Local R14-22, NAGE for a period of one year, beginning on November 18, 1974. By letter of December 9, 1974, you appealed the trial board decision to the National Executive Committee, NAGE, with the result that on February 21, 1975, National President Kenneth T. Lyons, NAGE, reversed the trial board, and ordered your reinstatement forthwith as a member and shop steward of Local R14-22, after finding that you had been denied a "full and impartial trial." By letter dated March 4, 1975, your employer was notified of your reinstatement to membership and to your former position as shop steward. By letter of March 14, 1975, you gave notice to Local R14-22 of your intent to file charges against it, embodied in your complaint of April 24.

Our investigation disclosed a reasonable basis for your complaint that you were denied a full and fair hearing in trial board proceedings on October 22 and November 8, 1974, which violated your rights provided in the Constitution and By-Laws of NAGE and Section 204.2(a)(5) of the Regulations. However, we find that the action of President Lyons in reinstating you to membership and to your position as shop steward was an effective settlement of that issue and further consideration of it is not warranted.

In your complaint you alleged violation of your equal rights as prescribed in Section 204.2(a)(1) of the Regulations. We interpret this to refer to the period of your effective suspension from membership in Local R14-22, since no evidence was furnished, or disclosed by our investigation, that you were otherwise denied any of the rights identified in a strict reading of the Section. We conclude that the action of President Lyons was an effective settlement of this issue and further consideration of it is not warranted.

You further complained that your freedom of speech and assembly, as prescribed in Section 204.2(a)(2) of the Regulations, was violated. This we also interpret to refer to the period of your effective suspension from membership in Local R14-22, since no evidence was furnished, or disclosed by our investigation, that you were otherwise denied any of the rights identified in a strict reading of the Section. We conclude that the action of President Lyons was an effective settlement of this issue and further consideration of it is not warranted.

In addition to the above, you assert that you have experienced mental torture, harassment, humiliation, embarrassment, and defamation resulting from your suspension and related actions and you request that various remedial steps be taken. We view these matters as being outside the authority of the Assistant Secretary, and matters for consideration elsewhere.

Based upon the foregoing, it is my decision to dismiss your complaint. Section 204.59 of the Regulations provides that you may obtain a review of my decision by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attn: Office of Labor-Management Standards Enforcement, Room N5408, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216. Your request for review shall include a complete statement of the facts and reasons upon which your request is based, and must be received by the Assistant Secretary before the close of business on October 20, 1975. Copies of your request shall be served on the respondent and the Assistant Regional Director, at the address appearing above in the letterhead, and a statement of such service shall be filed with the Assistant Secretary.

CULLEN P. KEOUGH
Assistant Regional Director
for Labor-Management Services

Mr. Donald M. Davis
9608 Dundawan Road
Baltimore, Maryland 21236

JAN 13 1976

Re: Department of Health, Education, and Welfare
Social Security Administration
Baltimore, Maryland
Case No. 22-5983(CA)

Dear Mr. Davis:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case alleging violations of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings on your complaint are unwarranted. Specifically, I find that your pre-complaint charges relating to alleged statements by Mr. Irving Becker and the Activity's alleged refusal to grant you access to certain reports are untimely pursuant to Section 203.2(a)(2) of the Assistant Secretary's Regulations which provides that a pre-complaint charge must be filed within six months of the occurrence of the alleged unfair labor practice. Moreover, I find that the allegations in your complaint relating to Mr. James Cardwell are untimely pursuant to Sections 203.2(b)(1) and (2) of the Assistant Secretary's Regulations which, in effect, require that after the filing of a charge, a complaint may be filed after a 30 day period in which the parties are to attempt to resolve the matter informally or after a final written decision on the charge is served by the Respondent on the charging party. In the instant case, your complaint, which included your allegations involving Mr. Cardwell, was filed on June 20, 1975, only ten days after the filing of the subject pre-complaint charge and prior to any final written decision on the charge by the Respondent.

Further, I find insufficient evidence to establish a reasonable basis for the allegation in your complaint relating to Mr. William MacNeil. In this respect, it should be noted that under Section 203.6(e) of the Assistant Secretary's Regulations the burden of proof is on the Complainant at all stages of the proceeding.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

August 29, 1975

Mr. Donald M. Davis
9608 Dundawan Road
Baltimore, Maryland 21236
(Cert. Mail No. 734230)

Re: Social Security Administration
Dept. of Health, Education and Welfare
Case No. 22-5983(CA)

Dear Mr. Davis:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation reveals as follows:

On June 20, 1975, you filed a complaint alleging that the Social Security Administration, Baltimore, Maryland, violated Section 19(a)(1) and (4) of Executive Order 11491, as amended, by discriminating against you for promotion because you criticized the agency's Black Lung program. The complaint alleged that three agency officials committed the above violations as follows: Mr. James Cardwell, Commissioner, was aware of coercion by Mr. Becker and Mr. MacNeil and of promotion denials because of your criticism of the agency Black Lung program, but has done nothing; that Mr. Irving Becker, Director, Labor Relations Staff, made coercive statements in July, 1971, and subsequently made a sworn statement denying those statements; that Mr. William MacNeil, Director, Equal Opportunity and Labor Relations made coercive remarks to your union representative, Ronald MacDonald, on January 29, 1975, regarding your grievance; and finally, you allege that the activity violated the Order by refusing to grant you access to certain reports as requested.

Evidence gathered during the investigation revealed the following:

1. that portion of your complaint alleging violations by Mr. James Cardwell were not raised by your pre-complaint charge of May 13, 1975, and as such cannot be considered as part of the complaint since the Assistant Secretary has ruled that he cannot consider matters not raised by the pre-complaint charge;

2. the allegations concerning Irving Becker were untimely and cannot be considered since the Regulations of the Assistant Secretary state under Section 203.2 that a charge of unfair labor practice must be filed within six months of the occurrence; your charge was filed with the agency on May 13, 1975, and Becker's statement was signed on June 21, 1972; in fact the charge was filed even more than six months after you allegedly became aware of Becker's signed statement as indicated in both your charge and complaint; in addition, evidence indicates that matters concerning this allegation were raised through the negotiated grievance procedure and as such, cannot be considered here since Section 19(d) of the Order as affirmed by the Assistant Secretary states that issues which are raised under a grievance procedure cannot also be raised under the complaint procedure;

3. the allegations of the agency's refusal to grant you access to certain reports lacks merit since evidence reveals that this matter was raised previously through the grievance and cannot be considered here as indicated above; and further, only the exclusive representative can request such personnel reports under consultation rights granted under Section 10(e) of the Order.

Additionally, there was no evidence to support any of the above allegations that such matters denied your rights under the Order or that such action was anti-union motivated or that it discriminated against you because of your union activities or because you filed a complaint under the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20004, not later than the close of business September 15, 1975.

Sincerely yours,

Frank P. Willette

Frank P. Willette
Acting Assistant Regional Director
for Labor-Management Services

cc: Mr. F. D. DeGeorge
Associate Comm. for Management and Administration
Social Security Administration
Department of Health, Education and Welfare
Baltimore, Maryland 21235
(Cert. Mail No. 701491)

Mr. Peter A. O'Donnell
Agency/Activity Representative
Social Security Administration
Department of Health, Education and Welfare
G-2608, West High Rise Building
6401 Security Boulevard
Baltimore, Maryland 21235
(Cert. Mail No. 701492)

bcc: S. Jesse Reuben, OFLMR
Dow Walker, AD/WAO

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

1-20-76

Mr. Harry H. Zucker
Veterans Administration Local 1151
American Federation of Government
Employees, AFL-CIO
252 Seventh Avenue
New York, New York 10001

632

Re: Veterans Administration
Regional Office
New York, New York
Case No. 30-6167

Dear Mr. Zucker:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Sections 19(a)(1) and (6) of the Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, in my view, the evidence establishes that the Respondent fulfilled its obligation to afford the Complainant an opportunity to meet and confer on the procedures to be utilized in creating the subject trainee position and on the impact of the establishment of such position on affected employees. In this regard, it was noted that there was no evidence that the Respondent, at any time material herein, refused to meet and confer with the Complainant, upon an appropriate request by the latter, concerning the above noted procedures and impact.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NEW YORK REGIONAL OFFICE

Suite 3515
1515 Broadway
New York, New York 10036

August 27, 1975 In reply refer to Case No. 30-6167(CA)

Harry H. Zucker, President
Veterans Administration Local 1151
American Federation of Government Employees,
AFL-CIO
252 Seventh Avenue
New York, New York 10001

Re: Veterans Administration Regional Office, New York, New York

Dear Mr. Zucker:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You contend that Respondent's decision to create the position of Rating Specialist (Occupational), Trainee, GS-101-11, without meaningful consultation and negotiation with the exclusive representative constituted a unilateral change in existing terms and conditions of employment and was thereby violative of Sections 19(a)(1) and (6) of the Order. Basically you contend that Respondent failed to furnish, upon request, certain relevant and necessary information and that Respondent exhibited a closed mind at the sessions held to discuss the creation of the new position.

Pursuant to Section 12(b)(5) of the Order, agency management retains the right "to determine the methods, means and personnel" by which its operations are to be conducted. Personnel means the total body of persons engaged in the performance of agency operations, (i.e., the composition of that body in terms of numbers, types of occupation and levels). Such reserved right is mandatory and may not be relinquished or diluted.1/

1/ Tidewater Virginia Federal Employees Metal Trade Council and Naval Public Works Center, Norfolk, Virginia, FLRC No. 71A-56.

Based on the foregoing, Respondent was under no obligation to negotiate its decision to create the trainee position and failure on its behalf to do so cannot be enforced through the unfair labor practice procedure. This is not to say that Respondent was not obligated to provide adequate notice to the exclusive representative so as to afford it ample opportunity to request bargaining, to the extent consonant with law and regulations, as to the procedures to be utilized and/or the impact upon employees adversely affected by such decision.

I have carefully considered the evidence submitted in this matter and I find that ample notice of Respondent's proposal to create the disputed position was given to the exclusive representative. No evidence has been adduced which could form a basis to conclude that the exclusive representative ever specifically requested to bargain about the procedures to be utilized or the adverse impact upon the employees which may have been affected. Evidence does disclose that Respondent sought a meeting to discuss its proposal but the exclusive representative declined to meet until it received, in writing, Respondent's objective, its reasoning for not maintaining present promotional lines, its position as to why it felt its proposal would not be unjust to employees presently at the GS-11 level and advice on certain other aspects of its proposal.

By letter dated February 28, 1975, Respondent responded to your request and requested that a meeting be held on March 3, 1975. By letter dated March 3, 1975, you responded to this letter contending it was unresponsive and requested additional information. By letter dated March 4, 1975, Respondent furnished the additional information and requested that a meeting be held on March 11, 1975, indicating that this was its final offer to meet and discuss the proposal. A meeting was subsequently held and on March 28, 1975, Respondent established the GS-11 Trainee position.

Based upon the foregoing and after careful consideration of the evidence, I find no basis to conclude that Respondent approached this matter with a closed mind nor do I find any basis to conclude that Respondent was unresponsive to your request for information. To the contrary, Respondent sought the views of the exclusive representative and afforded it amply opportunity to present its views on the proposal.

I am, therefore, dismissing the complaint in this matter.

Harry H. Zucker, President
V.A. Local 1151, AFGE, AFL-CIO Case No. 30-6167(CA)

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 12, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

CC: Stephan L. Shochet, Esq.
Veterans Administration
Office of the General Counsel (023)
Washington, D.C. 20420

Paul M. Nugent, Director
Veterans Administration Regional Office
252 Seventh Avenue
New York, New York 10001

Veterans Administration District Counsel 306/02
Veterans Adm. Regional Office
252 Seventh Avenue
New York, New York 10001

Joseph D. Gleason, Nat'l. Vice President
American Federation of Government Employees
AFL-CIO
300 Main Street
Orange, New Jersey 07050

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

1-20-76

633

Mr. Charles H. Cook
Labor Relations Officer
U. S. Department of Agriculture
Agricultural Research Service
Personnel Division
Hyattsville, Maryland 20782

Re: U. S. Department of Agriculture
Agricultural Research Service
Plum Island Animal Disease Center
Case No. 30-6026(GA)

Dear Mr. Cook:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

In agreement with the Assistant Regional Director, I find that the grievance herein is subject to the grievance and arbitration procedures in the parties' negotiated agreement. Article XVIII, Section 3 of the agreement provides that premium pay for vessel employees shall be as prescribed for Wage Grade employees in Administrative Memorandum 402.2. While neither party disputes the fact that the Memorandum is controlling in this situation, they are in dispute as to its interpretation and application. Therefore, and as Article XX, Section 1 of the negotiated grievance procedure provides that the grievance procedure is the exclusive procedure "for the consideration of grievances over the interpretation or application of the Agreement" and Administrative Memorandum 402.2 is incorporated by reference in the agreement, I find that the instant matter should be resolved through the negotiated grievance and arbitration procedures. In reaching this conclusion, I reject your contention that the Application herein should be dismissed because the matter at issue has been resolved in prior decisions of the Comptroller General. Thus, in my view, the alleged applicability herein of Comptroller General decisions goes to the merits of the instant grievance and the relief sought as distinguished from the grievability and arbitrability of the grievance under the negotiated agreement.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Relations, Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is 1515 Broadway, Room 3515, New York, New York 10036.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U.S. Department of Agriculture
Agricultural Research Service
Plum Island Animal Disease Center
Greenport, Long Island, New York
Activity

and

American Federation of Government
Employees, AFL-CIO
Local 1940
Labor-Organization - Applicant

CASE NO. 30-6026(C

REPORT AND FINDINGS ON ARBITRABILITY

Upon application for decision on grievability having been filed in accordance with Part 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds as follows:

Local 1940, American Federation of Government Employees, AFL-CIO, hereinafter referred to as the Union or the Applicant, is the exclusive representative for a unit of employees consisting of all employees of the Plum Island Animal Disease Center, Agricultural Research Service, U.S. Department of Agriculture, excluding professionals, management officials, supervisors, and employees engaged in Federal personnel work in other than a purely clerical capacity. A Collective Bargaining Agreement effective July 26, 1974, is currently in effect.

The grievance upon which the application is predicated involves a dispute among the parties concerning call back overtime pay for wage grade vessel employees. The relevant portions of the Collective Bargaining Agreement which are pertinent to the grievance are as follows:

ARTICLE III - CONTROLLING AUTHORITY

In the administration of all matters covered by this agreement, both officials and employees are governed by existing laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published Agency policies; and regulations in existence at the time the Agreement is approved; and by subsequently published Agency policies and regulations required by law or by the regulations of appropriate authorities; or authorized by the terms of a controlling agreement at a higher agency level.

ARTICLE XVIII - MARINE WAGE SYSTEM, SECTIONS (1) AND (3)

Section 1 - This Article shall apply only to vessel employees in the representation unit excepted from Chapter 51 of Title 5, United States Code by 5 U.S.C. 5102(c)(8).

Section 3 - Premium pay for vessel employees shall be as prescribed in AM 402.2, except that night time, shift and Sunday differentials shall not be paid. 1/

ARTICLE XX - GRIEVANCE PROCEDURE

Section 1 - The purpose of this Article is to provide a mutually satisfactory and exclusive procedure, applicable only to the unit, for the consideration of grievances over the interpretation or application of the Agreement.

The essential facts which form the basis for the grievance are not in dispute. During the work week of October 7 - 11, 1974, several wage grade vessel employees were required to report for duty earlier than their originally scheduled starting times. At the end of the week, Richard L. Gibbs, Applicant's shop steward, approached the supervisor of the affected employees, John Hartung, and requested that the affected employees be paid a minimum of two hours call-back overtime pay for each occasion they were required to report for duty prior to their regularly scheduled starting times. By memorandum dated October 18, 1974, Hartung acknowledged Gibbs' grievance and advised Gibbs that he had sought guidance from the Activity's Personnel Officer and was advised that AM 402.2 allows payment for a minimum of two hours only when an employee is (a) called back to work after completing his regular tour (b) called in on a scheduled day off or (c) called to come in early when it does not merge with and continue into the regularly scheduled tour. Hartung added that the foregoing should explain why call-back overtime that merges with a tour of duty is paid in 15 minute increments instead of the two hour minimum.

On October 20, 1974, Gibbs filed a grievance pursuant to the parties negotiated agreement contending that the affected employees were entitled to two hours of pay for each time they had been called back to work by virtue

1/ AM 402.2 as worded effective April 6, 1970 provided for the following in the computation of overtime work for wage grade employees:
"(d) Call-Back Overtime
Work: Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is considered at least 2 hours in duration for the purpose of overtime pay whether or not work is performed."

of Article XVIII, Section 3 of the Collective Bargaining Agreement. By letter dated October 22, 1974, the Activity responded to the grievance advising that the matter was not a proper subject for the negotiated grievance procedure because it did not concern an issue involving "the interpretation or application of the agreement" and therefore it had to be pursued through the Agency's procedure. The Activity added that there is no dispute that the payment of the overtime is governed by AM 402.2, however, it did not agree with Gibbs' interpretation of the regulation. The grievance was pursued up through the third step of the grievance procedure and on December 5, 1974, the Activity finally rejected the grievance on the basis it was not on a matter involving the application or interpretation of the Collective Bargaining Agreement.

According to the Activity, the matter of call-back overtime for wage grade vessel employees is governed by the procedures established for the payment of call-back overtime for Classification Act employees. AM 402.2 IV D., which sets forth the procedures for payment of call-back overtime pay for Classification Act employees provides:

> "An employee having a regularly scheduled tour of duty is entitled to a minimum of 2 hours pay at the overtime rate for each period of unscheduled overtime work which he is called back to perform, either on a regular workday after he has completed his regular schedule of work and left his place of employment, or on one of the days when he is off duty. The 2 hour minimum will also apply if the employee is called back to perform unscheduled overtime prior to the beginning of his regular tour of duty, except it does not apply when the early reporting for duty merges with and continues into the regularly scheduled tour of duty." 2/

2/ The statutory authority for call-back overtime for Classification Act employees is 5 U.S.C. 5542(b)(1) which provides that "unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment is deemed at least two hours in duration". There is no statutory basis for the payment of call back overtime for wage grade employees; however, there is a regulatory basis set forth in Supplement 532-1, Subchapter 58-4(b)(8) of the Federal Personnel Manual which provides "Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment is considered at least two hours in duration for the purpose of overtime pay, whether or not work is performed.

The basis for the wording of the above call-back overtime provision for General Schedule employees, according to the Activity, is based upon a 1965 decision by the Comptroller General 45 Comp. Gen. 53. This decision provides in part:

> "When civilian employees of the Government following regularly scheduled tours of duty perform unscheduled overtime work, or when early reporting for duty merges with and continues into a regularly scheduled tour of duty for the day, they are not entitled to payment of the minimum 2 hours call-back overtime ..." 3/

Prior to April 6, 1970, the provisions of AM 402.2 pertaining to call-back overtime for Wage Grade employees was similar to the wording of the provisions for General Schedule employees and provided that the two hour minimum did not apply when the early reporting for duty merged with and continued into the regularly scheduled tour of duty. The current wording of AM 402.2 for Wage Grade employees, according to the Activity, was done on April 6, 1970 to conform to the wording in a newly issued FPM Supplement. Activity maintains that the change in wording did not have any effect on the meaning or interpretation of the regulation.

Applicant does not dispute the Activity's contention that the provisions for call-back overtime for General Schedule and Wage Grade employees were similar prior to April 6, 1970. Applicant contends that AM 402.2 as it currently applies to Wage Grade vessel employees and as it existed prior to the effective date of the current agreement, is clear and hence requires the payment of two hours call-back overtime to each of the employees for each day on which they were required to report for duty earlier than their originally scheduled starting time.

Neither of the parties contends that the grievance is on a matter subject to a statutory appeals procedure nor is there any dispute that the portion of AM 402.2 concerning call-back overtime for Wage Grade employees has been incorporated into the Collective Bargaining Agreement. I find no evidence that the parties intended to give any special meaning to the words (emphasis underscored) of AM 402.2 by incorporating it into the Collective

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3/ Although this decision was rendered in a dispute involving General Schedule employees, Activity contends that the Comptroller General "in effect" has determined that call-back overtime provisions for Wage Grade and General Schedule employees must be interpreted "similarly and consistently". No Comptroller decision has specifically dealt with the issue of call-back overtime pay for Wage Grade employees, according to the Activity. Hence, I must reject this conclusion by the Activity.

Bargaining Agreement other than the meaning given to the words set forth in the regulation itself. Moreover, the Collective Bargaining Agreement is silent as to whether or not the parties intended to exclude grievances over Agency regulations incorporated in the Agreement and I find no evidence that the parties intended to make an agency's interpretation of such regulations binding.

In view of the foregoing and noting especially the recent amendments to the Executive Order, I find that the grievance is on a matter subject to the negotiated grievance procedure since it involves the interpretation and application of the provisions of the Agreement and that the grievance is subject to the negotiated grievance procedure. The Activity contends that such a decision would be contrary to Section 12(a) of the Order as such an interpretation would be contrary to existing law and regulations of appropriate authority. I have considered the evidence submitted in this matter and I find no basis to conclude that Section 12(a) of the Order is applicable. In this respect, I note neither of the parties contends that the Civil Service Commission has interpreted FPM Supplement 532-1, Subchapter 58-4b in such a manner so that the Agency has no discretion in interpreting and applying AM 402.2 as it relates to Wage Grade vessel employees nor do I find that either of the parties contends that a decision has been sought from the Comptroller General as to whether such payment would violate applicable law. Moreover, in FLRC Report No. 74, the Council stated, "Arbitrators of necessity now consider the meaning of laws and regulations, including agency regulations, in resolving grievances arising under negotiated agreements because such agreements often deal with substantive matters which are also dealt with in law and regulation and because Section 12(a) of the Order requires that the administration of each negotiated agreement be subject to such law and regulation ... final decisions under negotiated grievance procedures ... must be consistent with applicable law, appropriate regulation or the Order ...". 4/

Awards of Arbitrators are reviewable by the Federal Labor Relations Council pursuant to its rules.

Having found that the grievance is subject to the negotiated grievance procedure, the parties are directed to resolve the dispute by proceeding

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4/ Bureau of Prisons and Federal Prison Industries, Inc., Washington, D.C., FLRC No. 74A-24, Report No. 74 (July 17, 1975) p.6.

to the next step of the grievance procedure.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 23, 1975.

In the event no appeal is taken from this ruling, the parties, pursuant to Section 205.12 of the Regulations shall notify the undersigned, in writing, as to what action they have taken to comply with this decision no later than the close of business October 8, 1975.

DATED: September 8, 1975

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
1-21-76

634

Mr. Otto Thomas
President
Overseas Federation of Teachers,
American Federation of Teachers, AFL-CIO
PSC Box 4089
APO New York 09633

Re: Department of the Army
United States Dependents Education
Schools, European Area
Ansback American High School
Case No. 22-5662(RO)

Dear Mr. Thomas:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's decision setting aside the election in the above-named case.

In your request for review, you contend that the objections in the instant case are procedurally defective in that, allegedly, such objections were neither filed timely nor served properly on the parties. Also, you contend that the Assistant Regional Director erred in finding statements in a bulletin issued by the Overseas Federation of Teachers (OFT) on May 13, 1975, the day before the election, constituted a gross misrepresentation of a material fact which impaired the employees' ability to exercise their freedom of choice during the election. The bulletin claimed that the OFT had received information from an official of the Activity to the effect that a back-pay suit was being held up pending a resolution of the demand by the attorney for the Overseas Education Association (OEA) for a 25 percent fee to be taken from the back-pay due each employee. Moreover, you assert that he erred in finding that such bulletin was issued at a time when no effective reply was possible.

Under all of the circumstances, I find, in agreement with the Assistant Regional Director, and based on his reasoning, that the objections herein regarding the subject bulletin were filed timely and served properly. However, contrary to the Assistant Regional Director, I find, that under the circumstances herein, the statements in such bulletin could be intelligently evaluated by employees, and, properly evaluated, could not reasonably be expected to have a significant impact on the election. In this

connection, it was noted that the issue concerning the amount of the attorney's fee existed and had been a matter of public knowledge prior to the dissemination of the instant bulletin as evidenced by the minutes of the OEA's Executive Committee. Moreover, it was noted that upon being advised that certain of the statements were inaccurate, the OFT issued a prompt statement in this regard and the evidence establishes that such statement was communicated to a substantial number of the unit employees prior to the election.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's decision in the instant case, is granted and the case is hereby remanded to the Assistant Regional Director for further proceedings consistent with the decision herein and the applicable Regulations of the Assistant Secretary.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

UNITED STATES DEPENDENT EDUCATION SCHOOLS,
EUROPEAN AREA
ANSBACH AMERICAN HIGH SCHOOL
ANSBACH, GERMANY

Activity

and

OVERSEAS FEDERATION OF TEACHERS,
AMERICAN FEDERATION OF TEACHERS,
AFL-CIO

Case No. 22-5662(RO)

Petitioner

and

OVERSEAS EDUCATION ASSOCIATION

Intervenor

REPORT AND FINDINGS
ON
OBJECTION TO ELECTION

In accordance with the provisions of an agreement for a consent or directed election, approved on April 10, 1975, an election by secret ballot was conducted un der the supervision of the Area Director, Washington, D.C., on May 14, 1975.

The results of the election, as set forth in the Tally of Ballots, are as follows:

Approximate number of eligible voters	29
Void ballots	0
Votes cast for Overseas Federation of Teachers	17
Votes cast for Overseas Education Association	10
Votes cast against exclusive recognition	0
Valid votes counted	27
Challenged ballots	0
Valid votes counted plus challenged ballots	27

Challenged ballots are not sufficient in number to affect the results of the election.

Timely objections to conduct improperly affecting the results of the election were filed by the Intervenor. The objections are attached hereto as Appendix A. 1/

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Director has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation and my findings and conclusions with respect to each of the objections involved herein.

OBJECTION-

The Intervenor objects to the election as follows:

> "On May 13, 1975 the OFT Representatives did present a bulletin to the teachers at Ansbach/Katterbach school that was inaccurate and false. In another action on that same day the representative retracted the untruth. Since it was late in the day the OEA had no opportunity to refute the very damaging bulletin of the first instance."

On May 13, 1975, the Petitioner distributed the following bulletin to the employees in the unit, attached hereto as Appendix B, at about 12:30 PM by placing one copy in each teacher's mail box and the bulletin board in the teachers' lounge on which OFT materials are usually placed and on sundry tables which said, in part:

> "1. Our AFT affiliate in Washington has received information from Dr. Cardinale's Office of Overseas Dependents Education and from the DOD that the back pay suit

1/ Petitioner requests dismissal on the basis of Section 202.20 of the Assistant Secretary's Rules and Regulations since it was not served with a copy of the objections within five (5) days after the Tally of Ballots and that simultaneous service of the objections was not made. The request to dismiss on these bases are denied. I am satisfied that the objections were properly filed by the Intervenor within the meaning of the Rules and Regulations of the Assistant Secretary and Section 202.20 does not require simultaneous service of the objections.

> is being held up because the OEA lawyer is insisting on a fee of 25% to be taken from the amount due each teacher. No further action on paying teachers will occur till that matter is resolved."

Later the same day, after 4:30 PM and after the departure from work of many of the teachers, the Petitioner distributed the following in the same manner as indicated above:

> "13 May 1975
>
> TO Ansbach Teachers
>
> This is to inform you that I have been given assurance by Art McLoughlin and Lynne Holland that the OEA lawyer is NOT insisting on a 25% fee and that briefs have been submitted by the parties. A hearing on the matter is scheduled for 22 May '75. The information received from Dr. Cardinale's office is apparently inaccurate. To be sure I haven't told an untruth, I hereby refute what I printed in the information sheet I released this morning.
>
> /s/ Otto J. Thomas
> 13 May '75"

The Petitioner avers that the statement, as written, was believed to have been true because the same information was a part of the minutes of the OEA's March 15-16, 1975, Executive Meeting; that the information was common knowledge and the retraction was not an admission to an intentional lie but was a good faith attempt by OFT to keep the record current based on the word of the Washington based OEA Secretary. In addition, Art McLoughlin, an OEA Representative, addressed a group of teachers at a social gathering the evening of May 13, 1975, at which he discussed the back pay suit and advised the lawyer would accept a fee of 10%.

The OEA Executive Committee held a meeting on March 15 and 16, 1975. The minutes of that meeting (which the Petitioner asserts renders its bulletin accurate) shows the following, inter alia:

> "Counselor fees and expenses; Mr. Berger told Cout (sic.) of Claims that he would ask no more than 25% and intends to ask

for 25% for fees and 2% for expenses. These would be deducted before any payment is sent to the individual claimant. In other words, there will be about 27¢ per $1.00 deducted first - all claimants pay equally."

The parties submitted evidence which indicated that of the twenty-nine (29) employees who appeared on the voting eligibility list; twenty-one (21) averred that they read the OFT bulletin and of this group, twenty (20) read the retraction. The six (6) teachers who allegedly did not read the bulletin also failed to read the retraction. Thirteen (13) of the twenty (20) individuals who read the retraction did so the morning of the election but there was no indication whether these individuals did so prior to the commencement of voting at 10:30 AM or that they did so prior to casting their own ballot.

I find that the bulletin posted and circulated by the OFT was a gross departure from the facts contained in the OEA minutes. The OFT asserts that the bulletin accurately reflects what the OEA itself asserted. The OFT also asserts that this information was secured from the Activity as well as the Agency. No evidence, however, was presented to sustain this allegation; and there is no evidence of a retraction or denial by the OFT of their allegation of Activity and Agency involvement in the matter; nor, has the Petitioner retreated from its position that the Agency and Activity believe that the back pay suit is being held up because of the intransigence of OEA Counsel. I find that the import of the language of the bulletin misrepresents the cited section of the minutes. The minutes indicate what the cost of taking the matter to the Court of Claims might be but the bulletin, on the other hand, asserts that no action will be taken at all until the attorney's fee is settled. There is nothing in the minutes from which one can logically conclude that the Counsel was refusing to process the claim. This I find is the gross misrepresentation: the refusal to proceed until the fee is agreed to. I also include as a misrepresentation, since there was no substantiation, the allegation that the Agency and Activity, apparent litigants in the back pay matter, asserted that the OEA Counsel was intransigent in refusing to pursue the litigation until his fee was approved. I find, therefore, that the bulletin misrepresented the facts and, unless there are mitigating circumstances, the election should be set aside.

The Petitioner argues that the minutes of the OEA are sent to all OEA faculty representatives and that this information was already known by teachers at least two months prior to the time it was cited in the OFT bulletin. For the reasons indicated above, I find this argument to be without merit. The Petitioner also asserts

that, since the OFT bulletin was distributed at about noon-time, the day before the election, there was sufficient time by the OEA to reply and that the representatives of the OFT met with a group of teachers at which time the back pay suit was discussed. 2/

I reject these arguments on the basis that there was insufficient time for the OEA to respond to the OFT bulletin prior to the election since employees had left their place of work and did not return until the day of the election; moreover, I do not consider an OEA official speaking to some employees in the unit as constituting a forum for an adequate reply to the bulletin. Petitioner also asserts that at the same time an election was being conducted in the instant unit (for high school teachers), an election was being held in another unit (for elementary teachers) and the OEA was successful therein. The inference being that the bulletin could not affect the results of the election. I reject this defense since the effectiveness of a piece of propaganda is not dispositive of the issue. Finally, a defense might be asserted that those teachers who were not aware of the retraction were also not aware of the OFT bulletin. The evidence shows that there were twenty-nine (29) people eligible to vote in the election; only seventeen (17) indicated that they read the retraction. I find, under these circumstances, that the attempt by the Petitioner to retract did not remedy the effects of the posting. In any event, the retraction was not unqualified.

I find that the bulletin was a gross misrepresentation of fact and that the objection has merit. The parties are advised hereby that the election held on May 14, 1975, is set aside and a rerun election will be conducted within 60 days after the start of the 1975 school year, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of such service should accompany the request for review.

2/ Of the twenty-seven (27) teachers from whom information was secured, fifteen (15) indicated they did not hear nor observe any OEA official refute the contents of the OFT bulletin.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary within ten days after this report is received by an aggrieved party.

DATED; July 31, 1975

Kenneth L. Evans
Assistant Regional Director
for Labor-Management Services

Attachments: Appendix A
Appendix B
Service Sheet

bcc: Louis Wallerstein, Director
Office of Federal Labor-Management Relations

Dow Walker, AD/WAO

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

1-26-76

635

Mr. Ronald Gunton
President, National Federation of
Federal Employees, Local 491
P. O. Box 272
Bath, New York 14810

Re: Veterans Administration Center
Bath, New York
Case No. 35-3560

Dear Mr. Gunton:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case.

In agreement with the Assistant Regional Director, I find that further proceedings on the instant complaint are unwarranted. Section 203.2 of the Assistant Secretary's Regulations requires, in part, that an unfair labor practice charge must be filed within six months of the occurrence of the alleged unfair labor practice and that an unfair labor practice complaint must be filed within nine months of the occurrence of such unfair labor practice (in the absence of a written final decision on the charge). Neither the pre-complaint charge nor the complaint in this matter was timely filed in accordance with the above noted requirements.

In your request for review, you contend that the date of discovery, rather than the occurrence of the alleged unfair labor practice, should be the controlling date for determining timeliness. It was noted, in this regard, that in Federal Aviation Administration, Western Region, San Francisco, FLRC No. 74A-27, the Federal Labor Relations Council adopted the Assistant Secretary's finding that the date of the occurrence of the event is controlling in the absence of any evidence of fraudulent concealment. There is no evidence of fraudulent concealment in the instant case.

You also argue that the failure of the Activity to notify the Complainant of the subject meeting constitutes a continuing violation and that consequently, the instant complaint was timely

filed. Under the circumstances herein, I find that the Activity's alleged failure to notify the Complainant of the meeting involved did not establish a reasonable basis for a continuing violation and a waiver of the timeliness requirements.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

August 27, 1975 In reply refer to Case No. 35-3560(CA)

Ronald A. Gunton, President
Local 491
National Federation of Federal Employees, Ind.
PO Box 272
Bath, New York 14810

Re: Veterans Administration Center
Bath, New York

Dear Mr. Gunton:

The above captioned case alleging a violation of Section 19 of the Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted.

The complaint, as amended, alleges that Respondent violated Sections 19(a)(1) and (6) of the Order by entering into a formal discussion with an employee sometime during June of 1974 to discuss the implementation of a grievance settlement without affording the exclusive representative an opportunity to be present. The aggrieved employee acknowledges that the meeting took place in June of 1974; however, Complainant alleges it had no knowledge of the meeting until March 4, 1975 when Respondent attempted to use documentation referring to the June 1974 meeting in an Equal Employment Opportunity complaint process involving the aggrieved employee. 1/

The pre-complaint charge in this matter was filed March 4, 1975 and the complaint was filed on June 2, 1975 and amended on June 20, 1975.

1/ The aggrieved employee and Respondent disagree as to what was actually said at the meeting; however, in view of my disposition of the complaint, I find it unnecessary to make any findings concerning the discussion held.

Ronald A. Gunton, President
Local 491, NFFE, Ind. Case No. 35-3560(CA)

Section 203.2 of the Regulations of the Assistant Secretary requires that an unfair labor practice charge must be filed within six (6) months of the occurrence of the alleged unfair labor practice. An unfair labor practice complaint must be filed within nine (9) months of the occurrence of the alleged unfair labor practice.

Based on the above facts, it is evident that neither the pre-complaint charge nor the complaint have been timely filed. The date of occurrence of the alleged unfair labor practice, not the date of discovery, is the controlling date for determining timeliness. 2/

I am, therefore, dismissing the complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor Management Relations, ATT: Office of Federal Labor Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 12, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

2/ Veterans Administration Hospital, Muskogee, Oklahoma, A/SLMR No. 301.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

1-21-76

636

Mr. Thomas Fujikawa
Administrative Assistant
International Brotherhood of Electrical
Workers, Local Union No. 1186
904 Kohou Street
Room 201
Honolulu, Hawaii 96817

Re: Department of the Air Force
15th Air Base Wing
Hickam Air Force Base, Hawaii
Case No. 73-625(AP)

Dear Mr. Fujikawa:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability in the above-captioned case.

In agreement with the Assistant Regional Director, and noting particularly the conclusion of the Civil Service Commission that the grievance herein is on a matter for which a statutory appeal procedure exists, I find that dismissal of the instant Application is warranted. Accordingly, your request for review is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

DEPARTMENT OF THE AIR FORCE 15TH AIR BASE WING HICKAM AIR FORCE BASE, HAWAII -ACTIVITY	)	
-AND-	)	CASE NO. 73-625(AP)
LOCAL UNION 1186, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL-CIO -LABOR ORGANIZATION/ APPLICANT	)	

ASSISTANT REGIONAL DIRECTOR'S REPORT AND FINDINGS

ON

GRIEVABILITY

On April 17, 1975, Local Union 1186, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Applicant, filed an application in accordance with Section 205 of the Rules and Regulations of the Assistant Secretary requesting a decision as to whether a grievance is on a matter subject to the grievance procedure in an existing agreement. The undersigned has caused an investigation of the facts to be made and finds as follows:

There are approximately 2000 employees in the Unit exclusively represented by the Applicant. The current negotiated agreement between the Applicant and the 15th Air Base Wing, Hickam Air Force Base, Hawaii, herein called the Activity, was executed October 1, 1973.

On April 1, 1975, employee Paul E. Garrett, Computer Specialist, filed a grievance with the Activity, alleging that a periodic step increase had been denied to him, and that the denial was not based on or due to his work performance, but rather was a reprisal act directed toward him as a result of personal bias relating to the January and February 1975 decisions that were in his favor. As way of explanation, the January decision alluded to is an Examiner's Report filed by an Appeal and Grievance Examiner on January 27, 1975, which recommended cancellation of a decision to remove Garrett from Federal employment, and the February decision relates to a letter from the Commander dated February 12, 1975, to Garrett advising him that the Commander was going to accept the recommendation of the Grievance Examiner.

According to the Application the unresolved question is whether Section 1 and 2 of Article XVII (Memorandum of Agreement between the parties) are matters subject to the negotiated grievance procedure. Article XVII states as follows:

ACCEPTANCE LEVEL OF COMPETENCE DETERMINATION

Section 1. Acceptable level of competence determinations will be made only on the basis of work requirements of the particular position or specific work standards as may have been established by the Employer for the position; provided, however, that a determination that an employee is not performing at an acceptable level of competence will not be used to dispose of questions of misconduct.

Section 2. Upon receipt of the Personnel Copy SF 1126, Payroll Change Slip from the Central Civilian Personnel Office (CCPO), the supervisor will review the work of the employee and take appropriate action in accordance with applicable laws and regulations.

The Applicant contends that the grievance involved is on a matter subject to the grievance procedure in an existing agreement.[1/] Further, that a distinction should be drawn between a denial of a step increase based on alleged personal reasons. Moreover, that certain portions of the Federal Personnel Manual indicate that statutory consideration would only be given to whether the employee's work performance is of an acceptable level of competence.

The Activity returned the grievance without action, stating this was done because the basis for the grievance is governed by a statutory appeals procedure and is therefore subject to the procedure by law. In this regard, the Activity points to that part of Section 13(a) of Executive Order 11491, as amended, which states, "A negotiated grievance procedure may not cover any other matters, including matters for which statutory appeals procedures exist, and shall be the exclusive procedure available to the parties and the employees in the unit for resolving such grievances."

Pursuant to an arrangement reached between the Civil Service Commission and the Assistant Secretary of Labor-Management Relations, the Commission, as more fully explicated in its attached September 9, 1975, letter, has advised that the subject matter of this Application should be adjudicated under the statutory appeal procedure for acceptable level of competence decisions.

Based on the foregoing, I find that the grievance involved in this case is not subject to grievance/arbitration procedures under the negotiated agreement.

1/ Article XXV, Grievance Procedure, Section 2 of the Memorandum of Agreement between the parties, provides as follows:

> The negotiated grievance procedure contained herein is applicable only to members of the unit and shall apply only to the consideration of grievances over the interpretation or application of this agreement. This procedure will be the only procedure for the consideration of such grievances. Grievances under this procedure may be submitted by an employee, a group of employees, by the Union or by the employer.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than close of business on October 7, 1975.

Labor-Management Services Administration

Gordon M. Byrholdt

Gordon M. Byrholdt, Assistant Regional Director
San Francisco Region, U. S. Department of Labor
450 Golden Gate Avenue, Room 9061
San Francisco, California 94102

Dated: September 22, 1975

Attachment

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF POLICIES AND STANDARDS
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

SEP 9 1975

Mr. Gordon M. Byrholdt
Assistant RD for Labor-Management
Services
Department of Labor
450 Golden Gate Avenue, Box 36017
Room 9061, Federal Building
San Francisco, California 94102

Dear Mr. Byrholdt:

This is in response to your request for an interpretation of Commission administered appeals systems in connection with a grievability/arbitrability dispute under E.O. 11491, as amended. (Your reference 73-625)

On March 27, 1975, the employee filed a grievance contending that a March 20, 1975, agency decision to withhold his step increase was not made on the basis of his work performance, but was made on the basis of personal reasons. The agency maintains that the employee's step increase was withheld because of his failure to perform at an acceptable level of competence.

Section 5335 of Title 5, U.S. Code, provides that the granting of a periodic step increase is conditional upon a determination by the head of the agency that the employee's work is of an acceptable level of competence. The file you submitted indicates that in this case the agency has determined that the employee's work is not of an acceptable level of competence. When such a determination is made, the employee may request that it be reconsidered within the agency under procedures established by the Civil Service Commission. Section 5335 further provides that if the determination is affirmed on reconsideration, the employee has a right to appeal the negative determination to the Commission.

A step increase may not legitimately be withheld for personal reasons, but -- provided the employee meets the other requirements of Section 5335 of Title 5 and the Commission's implementing regulations (Part 531, Title 5, Code of Federal Regulations) -- only on the basis of work performance. Therefore, we believe the employee's allegation in this case should be adjudicated under the statutory appeal procedure for acceptable level of competence decisions.

Sincerely yours,

Arch S. Ramsay
Director

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

1-21-76

637

Mr. R. H. Gaines, Jr.
Recording Secretary
Federal Employees Metal Trades Council
of Charleston, South Carolina
316 Cessna Avenue
Charleston, South Carolina 29407

Re; Charleston Naval Shipyard
Charleston, South Carolina
Case No. 40-6122(AP)

Dear Mr. Gaines:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's Report and Findings on Arbitrability in the above-captioned case.

In agreement with the Acting Assistant Regional Director, and based on his reasoning, I find that the grievance over the suspension given unit employee L. R. Potts on November 1, 1974, was not subject to arbitration under the negotiated agreement between the Federal Employees Metal Trades Council of Charleston, South Carolina (Applicant) and the Charleston Naval Shipyard. Thus, the evidence reveals that on January 2, 1975, Potts appealed his grievance to the Shipyard Commander and, thereafter, the Applicant unsuccessfully sought to arbitrate the matter. Article XXII of the parties' negotiated agreement provides that a grievance may be processed after step 2 "in one of the following ways:" by either referral to the Shipyard Commander or to arbitration. In my view, this provision indicates clearly that such grievance may not be processed by referral to both the Commander and to arbitration.

Based on the foregoing, your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Charleston Naval Shipyard
Charleston, South Carolina

Activity

and

Case No. 40-6122(AP)

Federal Employees Metal Trades
Council of Charleston, AFL-CIO

Labor Organization

REPORT AND FINDING

ON

ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

Federal Employees Metal Trades Council of Charleston holds exclusive recognition for:

> all ungraded employees of the shipyard including employees holding the rating of leader (except those who perform on a full time basis the normal first full supervisory level functions), except for GS employees, Patternmakers, Patternmaker Apprentices, Planners and Estimators. Ship Progressmen. Ship Schedulers. Electronic Mechanics (cryptographic), Management officials, professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, and guards and supervisors, as defined in Executive Order 11491, as amended.

The current Agreement was executed on December 22, 1972 to remain in force for a period of three (3) years.

In order to address the facts of the case a chronological listing of events follows:

October 30, 1974

L. R. Potts, unit employee was informed of a forthcoming suspension.

October 31, 1974

L. R. Potts filed a formal grievance alleging the Activity was in violation of Article XVI, Section 2 of the current Agreement by informing him on October 30, 1974 that he was to be suspended for one (1) day on November 1, 1974 for "leaving job to which assigned during working hours without proper permission" (first infraction) on August 23, 1974.

November 1, 1974

Effective date of suspension.

1/ It is not clear in the grievance who informed Potts of the forthcoming action.

November 25, 1974

Grievance denied at Step 1 of the grievance procedure. Mr. Potts appealed his grievance to Step 2.

December 20, 1974

The grievance was denied at Step 2.

January 2, 1975

Potts appealed his grievance to the Commander, Charleston Naval Shipyard stating:

1. I am not satisfied with the answer given my grievance under Article XXII, Section 4(b), Step 2 of the Labor-Management Relations Agreement.

2. Under the provisions of Article XXII, Section 4(b) Step 3 of the Labor-Management Relations Agreement, this grievance is herewith submitted for your consideration (emphasis added)

January 21, 1975

Potts and his representative met with the Shipyard Commander, in an attempt to resolve the grievance.

The union also requested the matter be submitted to arbitration.2/

February 17, 1975

The Commander issued his written decision denying the grievance. The Commander also returned the arbitration referral stating:

> in applying these provisions of the agreement to Mr. Potts' grievance, his election to refer the case to step 3 for decision, or Council's right to refer the case to arbitration, is clear. An election between receiving a step 3 decision or processing the matter to arbitration must be made. There is no provision in reference (b) (the negotiated agreement) that offers an alternative to these provisions under which the final step of the grievance procedure is processed. Mr. Potts in this instance referred the grievance to step 3 and the provisions of reference (b) have been met at step 3 in processing his grievance. In the light of the foregoing conclusion, the referral to arbitration by enclosure (1) (arbitration referral letter of January 21, 1975) is considered contrary to provisions of reference (b) and is consequently returned without action.

Article XVI titled Disciplinary Action, Section 2:

> Disciplinary actions shall be taken only for just cause and the employee will be notified of his rights to grieve and of the appropriate procedure available for such action.

Article XXII is titled Grievance Procedure. Section 4 sets forth an informal and formal procedure to be used by unit employees for processing grievances. Section 4(b) covers the formal procedure which reads:

2/ The request was prior to a written decision from the Commander, but subsequently to being apprised what decision he (Commander) had made.

Formal Procedure. Employees using the formal procedure shall be represented by the appropriate Council Representative(s), as determined under the provisions of Article 6 of this Agreement. Reasonable official time will be given to an employee in the unit, his representative or to Council to present a grievance under this procedure.

Step 1. If the supervisor's decision in the informal procedure does not resolve the employee's complaint, the employee may submit his complaint as a grievance to his Group Superintendent, or Division Head, as appropriate, for a decision. The employee's grievance must be submitted in writing (on Appropriate form) within five (5) work days of receipt of the immediate supervisor's decision. The written grievance shall contain as a minimum the details of the matter which gave rise to the grievance which personally affected the grievant, the date of the matter grieved, the persons involved in or responsible for the matter grieved, the specific provision(s) of the Agreement, the interpretation or application of which is in question, and the desired corrective action within the discretion of Management that is personal to the grievant. The form must also contain the date of the informal discussion, the date the informal decision was received and the name of the immediate supervisor who rendered the decision. The Group Superintendent or Division Head, as appropriate, with other desired Management officials and staff assistance will meet with the grievant and his Steward and/or Chief Steward within five (5) work days of receipt of the grievance to attempt to resolve the grievance. A written decision will be issued to the grievant, with a copy to the Steward, within ten (10) work days after the meeting.

Step 2. If an issue raised in the grievance is not resolved by the Step 1 decision, the employee may submit the unresolved issue to his Department or Office Head, as appropriate, for consideration and a decision. The issue must be submitted in writing, to Step 2 within five (5) work days of receipt of the Step 1 decision in order to be considered. The Department or Office Head, as appropriate, or their designees and desired Management Officials and staff assistance, shall meet within five (5) work days, with the grievant, his Steward and a Council Representative from within the unit and empowered to state Council's official position in an attempt to resolve the grievance. A written decision will be issued to the employee, with a copy to his representative, within ten (10) work days after the Step 2 meeting.

Step 3. If the issue raised in the grievance is not resolved by granting the specifically stated desired corrective action by the Step 2 decision, and the desired corrective actions are not prohibited by regulations of Higher Authority, the grievance may be processed further in one of the following ways:

(a) The employee may refer the grievance to the Shipyard Commander, in writing, within ten (10) work days of receipt of the Step 2 decision. The Shipyard Commander or his deisgnee, along with desired Management officials and staff assistance, will meet with the employee, his Steward and/or Chief Steward and a Council Representative from within the unit and empowered to state the Council's official position, within ten (10) work days of receipt of the grievance in an attempt to resolve the matter. The Shipyard Commander will issue the decision to the employee, with a copy to the Council Representative and Chief Steward within ten (10) work days of the Step 3 meeting: or

(b) Council may refer the grievance to arbitration in accordance with provisions of Article 23 and the employee's approval will not be required. The referral must be made within twenty (20) work days of the employee's receipt of the Step 2 decision.3/

Article XXIII is titled Arbitration. Section 1 reads:

> The purpose of the Article is to specify the procedure for processing Employee, Council and Management grievances, to the extent provided below to arbitration. The processing of grievances under this Article and arbitration opinions and awards thereon shall be limited to questions concerning the interpretation and application of expressed provisions of this Agreement and may not extend to changes or proposed changes to this Agreement. The arbitrator will only have authority to interpret and apply those bilaterally negotiated provisions of the Agreement. He shall not have the authority to decide matters in this Agreement involving the interpretation or application of regulations of Higher Authority regardless of whether such policies are quoted, paraphrased or cited in this Agreement. Neither shall the arbitrator change, modify, alter, delete or add to the provisions of this Agreement, since such right is the prerogative of the contracting parties only. Referrals to arbitration under this article must be requested by either the Council President or the Shipyard Commander, and may cover only the following matters on which the parties mutually agree to the issue(s) previously considered, that remain unresolved:
>
> (a) Employee grievances processed through Section 4, Step 3 of Article 22;
>
> (b) Council grievances processed under Section 5 of Article 22; and
>
> (c) Management grievances processed under Section 9 of Article 22 of this Agreement.

The Activity states the language as set forth in the Agreement is clear and unequivocal as it clearly set forth a choice. The Activity points out that Article XXII, Section 4(b), Step 3 gives the Applicant a choice to proceed by referring the grievance to the Commander (Step 3(a)) or referring the grievance to arbitration (Step 3(b)). The Activity asserts that the union may choose one of the two but not both. The Activity contends that the union and the grievant having elected to refer the grievance to the Commander it is precluded from utilizing the arbitration route.

The Applicant argues that Article XXIII, Section 1(a)(b) and (c) cover the matters which may be submitted to arbitration. It contends that Section 1(a) of Article XX grants to the employee the right to process the grievance to the Commander for a decision and following the Commander's decision, the union has the right to process this grievance to arbitration, that right being provided by Article XXIII, Section 1(a). However, if the employee chooses not to process the grievance through Step 3(a) of Article XX, then the union has the right to process the grievance directly to arbitration, that right being provided by the combined provisions of Article 22, Section 4(b), Step (b) and Article XXIII, Section 1(a).

Further the Applicant states under the provisions of Article XXII, Section 4(b), Step 3 of the Agreement, the employee has the right to submit the grievance concerned to the Commander (Step 3(a)). The Applicant contends the above action by the employee does not abrogate its right to refer the grievance to a third party for an unbiased decision, within the time spans set out in the Agreement under Article XXIII.

3/ The entire formal procedure consisting of three (3) steps is quoted as above with the exception of one paragraph dealing with time limits not deemed relevant.

The fundamental issue is whether the Applicant may utilize the arbitration procedure in Article XXIII after it has opted to appeal the grievance to the Commander.

A review of Step 3(a), Section 4(b), Article XXII and Step 3(b) of the same Section and Article shows that Step 3(a) and Step 3(b) is separated by the connective "or" and, further that "or" is preceded by a semi-colon. It is clear, therefore, that the disjunctive is intended. The Applicant, therefore, has its choice of one of two alternatives: the Commander rendering the decision in the grievance or resolution of the grievance through the arbitration process.

The language in Article XXIII, Section 1 is a delineation of an arbitrator's authority and a limitation to the scope of arbitration. Section 1(a) of that Article, however, authorizes arbitration on issues which by mutual agreement remain unresolved, i.e., "employee grievances processed through Section 4, Step 3." The Applicant, having opted to have the grievance referred to the Commander, embarked on a course leading to resolution of the grievance albeit that resolution was and is not satisfactory to the grievant or to the Applicant. Sections 1(a)(b) and (c) of Article allow referral to arbitration only those particularized matters "on which the parties mutually agree to the issue(s) previously considered..." (emphasis supplied). Inasmuch as there is no mutual agreement, and inasmuch as the Applicant has exercised the option as provided in the Agreement, it is barred from resolving the grievance through arbitration. Simply stated, the Applicant chose one of two alternatives. It may not choose both.

Based on the above I find that the grievance is not on a matter subject to arbitration under the existing agreement.

Pursuant to Section 205.6(b) of the Rules and Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary with a copy served upon this office and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business June 23, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

[signature]

Acting Assistant Regional Director
for Labor-Management Services

Dated: June 6, 1975

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

1-21-76

638

Mr. James W. Tanner
President, AFGE Local 1881
P. O. Box 30
East Irvine, California 92650

R. A. Kuci, Colonel USMC
Commanding Officer
MCAS, El Toro
Santa Anna, California 92710

Re: Marine Corps Air Station
El Toro, Santa Anna California
Case No. 72-5420

Gentlemen:

On September 23, 1975, the Assistant Regional Director issued his decision in the subject case finding that the Respondent Activity had not engaged in conduct alleged to be violative of Section 19(a)(1) and (4) of Executive Order 11491, as amended, and recommending that the complaint herein be dismissed. A request for review was filed with respect to the Assistant Regional Director's decision.

The complaint alleged, in essence, that the Respondent violated Section 19(a)(1) and (4) of the Order based on its action in denying employee Elmer Wright, Jr.'s request for union representation at a meeting concerning an incident which occurred on a prior work shift. The evidence established that, subsequent to the meeting in question, Wright was given a letter of reprimand although there is a conflict with regard to the basis for the reprimand.

The Assistant Regional Director dismissed the complaint finding that the meeting in issue did not constitute a formal discussion within the meaning of Section 10(e) of the Order and that it followed that the denial of representation at such meeting did not violate Section 19(a)(1) and (4) of the Order.

Prior to the issuance of the Assistant Regional Director's decision in this matter, the Federal Labor Relations Council, on May 9, 1975, issued an information announcement (copy enclosed) which indicated that the Council had determined that the following is a major policy issue which has general application to the

Federal Labor-Management Relations Program and upon which it tends to issue a major policy statement:

> Does an employee in a unit of exclusive recognition have a protected right under the Order to assistance (possibly including personal representation) by the exclusive representative when he is summoned to a meeting or interview with agency management, and if so, under what circumstances may such a right be exercised?

As the issue involved in the subject case is related to the major policy issue currently under review by the Council, in my view, it would effectuate the purposes and policies of the Order to defer further action in the instant case pending the Council's resolution of the above-noted major policy issue.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

September 23, 1975

Mr. James W. Tanner, President
AFGE Local 1881
P. O. Box 30
East Irvine, California 92650

Re: Marine Corps Air Station
El Toro, California -
AFGE Local 1881
Case No. 72-5420

Dear Mr. Tanner:

The above-captioned case alleging a violation of Section 19(a)(1) and (4) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, it is noted that the meeting conducted by the Fire Chief on June 5, 1975, does not constitute a formal discussion within the meaning of Section 10(e) of the Order and, accordingly, Mr. Wright was not entitled to have a union representative present. The letter of reprimand issued to Mr. Wright resulted from Mr. Wright's conduct at the meeting and was not the purpose for which the meeting was initiated.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on October 8, 1975.

Sincerely,

GMB

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

1-28-76

1 639

Mr. Richard L. Robertson
Chief Steward
Local 574, International Brotherhood
of Electrical Workers
Route 1, Box 486-C
Port Orchard, Washington 98366

Re: Department of the Navy
Puget Sound Naval Shipyard
Case No. 71-3349

Dear Mr. Robertson:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case, alleging violation of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, in my view, the evidence herein did not establish that the Activity suspended Rodney E. Ogden because he engaged in conduct protected by the Order.

Accordingly, and noting the absence of any evidence that the Assistant Regional Director processed your complaint improperly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

September 16, 1975

Mr. Richard L. Robertson
Chief Steward, IBEW Local 574
Rt. 1 Box 436-C
Port Orchard, Washington 98366

Re: Puget Sound Naval Shipyard -
Richard L. Robertson
Case No. 71-3349

Dear Mr. Robertson:

The above captioned case alleging a violation of Executive Order 11491, as amended, has been considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, it appears that Mr. Odgen's suspension was occasioned by his altercation with his supervisor rather than by his union activities or because he filed a complaint or gave testimony under the Order in violation of Section 19 of the Order.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business September 22, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C., 20210

1-28-76

Mr. Richard F. Lake
Recording Secretary
Tidewater Virginia Federal Employees
Metal Trades Council, AFL-CIO
2700 Airline Boulevard
Portsmouth, Virginia 23701

640

Re: Department of the Navy
Norfolk Naval Shipyard
Case No. 22-5973(CA)

Dear Mr. Lake:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(1), (3) and (5) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. Thus, I agree with the Assistant Regional Director's determination that the complaint herein involves a good faith dispute over the interpretation of certain provisions of the parties' negotiated agreement and that the matter should be resolved through the negotiated procedure, rather than under the unfair labor practice procedures. See, General Services Administration, Region 5, Public Buildings Service, Chicago Field Office, A/SLMR No. 528, and Federal Aviation Administration, Muskegon Air Traffic Control Tower, A/SLMR No. 534.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

August 21, 1975

Mr. Richard F. Lake
Recording Secretary
Tidewater Virginia Federal Employees
Metal Trades Council, AFL-CIO
2700 Airline Boulevard
Portsmouth, Va. 23701
(Cert. Mail No. 701795)

Re: Department of the Navy
Norfolk Naval Shipyard
Case No. 22-5973(CA)

Dear Mr. Lake:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your unfair labor practice complaint alleging violations of Section 19(a)(1), (3) and (5) of the Executive Order avers that two stewards of the Metal Trades Council (MTC) were denied permission to go to the MTC Office, located within the Norfolk Naval Shipyard, to perform official duties as MTC stewards. The Activity essentially agrees with the factual allegation that it denied the request of the two stewards to visit the Council Office during working hours.

Article 7 of the contract sets out the conditions pursuant to which office space is made available to the MTC, and describes those union officials and agents who may visit the office during regular working hours. The Respondent asserts that a reading of the contract indicates clearly those individuals who may use the office during working hours on union-management business and takes the position that the contract does not permit MTC stewards this right arguing that only Chief Stewards and two designated MTC representatives could visit the office for union-management purposes. Your organization, on the other hand, asserts that a reading of the contract does not bar MTC stewards from using the office. It is clear, therefore, that the complaint alleges as an unfair labor practice a disagreement over the interpretation of an existing collective bargaining agreement which provides a procedure for resolving the disagreement. In these circumstances, therefore, the Assistant Secretary leaves the parties to their remedies under the collective bargaining agreement for its resolution. 1/

1/ Assistant Secretary Report on a Ruling, Report No. 49, copy of which is enclosed herewith.

It was not alleged in the complaint that the refusal to permit the two stewards to visit the office was a change in past practices, but the investigation appeared to indicate that you also asserted this as a fact. The investigation revealed that there may have been occasions when MTC shop stewards were given permission to visit the union office but, in a unit of almost 10,000 employees with numbers of stewards to police the contract and monitor working conditions, the record falls far short of demonstrating a practice of shop stewards being permitted to go to the union office during working hours.

I find, therefore, that there is no reasonable cause to believe that a violation is occurring and that a notice of hearing should be issued.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business September 5, 1975.

Sincerely,

Eugene M. Levine
Acting Assistant Regional Director
for Labor-Management Services

Enclosure

cc: John J. Connerton
Labor Relations Advisor
Labor Disputes & Appeals Section
Department of the Navy
Office of Civilian Manpower Management
Washington, D.C. 20390
(Cert. Mail No. 701796)

Rear Admiral E. T. Westfall, USN
Department of the Navy
Norfolk Naval Shipyard
Portsmouth, Va. 23709

bcc: Dow E. Walker, AD/WAO
Attn: Earl Hart, AAD

S. Jesse Reuben, OFLMR

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

1-23-76

641

Mr. Charles H. Slightam
27-28 BOQ 1044
Bogelweh Housing
675 Kaiserslautern, Germany

Re: Department of the Army
USDESEA
Case No. 22-5920(CA)

Dear Mr. Slightam:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(3) and (5) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning I find that further proceedings in this matter are unwarranted. Thus, in my view, the evidence presented is insufficient to establish a reasonable basis for the allegation that the Respondent knowingly arranged for a faculty meeting in which the current Overseas Education Association (OEA) Faculty Representative was berated or that there was collusion between the Respondent and certain dissident members of the OEA. In addition, your request for an independent investigation is denied, inasmuch as you made no showing that you lacked either access to pertinent documents or that you were unable to obtain statements from prospective witnesses as required by Section 203.6 of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

July 21, 1975

Mr. Charles H. Slightam
27-28 BOQ 1044
Bogelweh Housing
675 Kaiserlautern, Germany
(Cert. Mail No. 701697)
AIR MAIL

Re: Department of the Army
USDESEA
Case No. 22-5920(CA)

Dear Mr. Slightam:

The above-captioned case alleging a violation of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation revealed that on February 13, 1975 a joint faculty meeting was held at the Sembach Elementary School which was conducted by Timothy Kelley, Principal of the School. After the meeting, he informed the teachers that several members of the faculty had requested time to discuss other matters with the teacher group. Thereafter, Mr. Tschabold, a past faculty representative of the employees, apparently spoke to the group. There was no evidence that either Mr. Kelley, or any other supervisor or management representative, was present at the meeting.

You allege that Mr. Tschabold discussed union matters and denigrated the OEA Faculty Representative. You further contend that Mr. Kelley and Mr. Tschabold had arranged this meeting for the purpose of discreding the exclusive representative in violation of Section 19(a)(3) and (5) of the Executive Order 11491, as amended.

However, you have not submitted evidence establishing that Mr. Kelley arranged a meeting for the purpose of union discussions or that he knew the purpose of the meeting.

You have submitted no evidence concerning what transpired at the meeting. Specifically, you have presented no facts regarding what was discussed, what Mr. Tschabold stated during the meeting, and what was stated by other teachers or union officials in attendance.

You have not established a reasonable basis that a 19(a)(3) or (5) violation has occurred.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary within ten days. For purposes of service of this dismissal, you may consider the ten days to start running from the date it is received by you or your representative.

Sincerely,

Kenneth L. Evans

Kenneth L. Evans
Assistant Regional Director
for Labor-Management Services

cc: Mr. Timothy Kelley, Principal
Sembach Schools
APO, New York 09130
(Cert. Mail No. 701698)

Mr. David Bean, Labor Relations
Department of the Army, USDESEA
APO New York 09164
(Cert. Mail No. 701699)

Dr. Joseph A. Mason, Director
U. S. Dependents Schools
European Area (USDESEA)
APO New York 09164
(Cert. Mail No. 701700)

Mr. Sanburn Sutherland
Office of Civilian Personnel
Employee Relations
The Pentagon
Washington, D.C. 20310
(Cert. Mail No. 701701)

Mr. Arthur E. McLaughlin, Jr.
Executive Secretary
Overseas Education Association
1201 - 16th Street, NW
Washington, D.C. 20036
(Cert. Mail No. 701702)

bcc: Dow E. Walker, AD/WAO
S. Jesse Reuben, OFLMR

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

1-30-76

Ms. Lisa Renee Strax
Staff Attorney
National Federation of Federal
Employees
Legal Department
1016 16th St., N. W.
Washington, D. C. 20036

642

Re: U. S. Department of the Army
U. S. Materiel Command, Hqt.
Case No. 22-6309(CA)

Dear Ms. Strax:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (2), (4), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted inasmuch as the evidence presented does not establish a reasonable basis for your complaint concerning alleged improper conduct by the Respondent with respect to two employees based on union membership considerations. Moreover, noting the Complainant's letter of April 10, 1975, to the Respondent, it appears that the issues involved herein have been raised previously with respect to both employees under a grievance procedure. Therefore, Section 19(d) also would preclude further proceedings in this matter.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

September 29, 1975

Mr. William J. Mitchell
Local 1332, National Federation of Federal
Employees
6104 Edsall Road
Alexandria, Va. 22304
(Certified Mail No. 701495)

Re: U.S. Dept. of the Army
U.S. Army Material Command, Hq
Case No. 22-6309(CA)

Dear Mr. Mitchell:

The above-captioned complaint alleging a violation of Executive Order 11491, as amended, has been investigated and carefully considered. It does not appear that further proceedings are warranted as a reasonable basis for the complaint has not been established.

You allege that the Respondent has violated Section 19(a)(1), (2), (4), (5) and (6) of the Executive Order by harassing, intimidating and discriminating against Kay Driscoll, N.F.F.E., Local 1332, Vice President, Recording Secretary and Steward; and Elenita Scarola, N.F.F.E., Local 1332 Steward, because of their Union activity; by failing to consult, confer or negotiate as required by the Order.

With regard to the allegations of harassment, intimidation and coercion against Mrs. Driscoll, the investigation has established that the same issues were raised under a grievance procedure. I find that this portion of your complaint is barred by Section 19(d) of the Order which precludes the raising of the same issue under the complaint procedure which has been raised under a grievance procedure.

As for the remaining portions of the complaint, you contend that the alleged violations began at a time coincident with the Respondent's discovery of the employee's union affiliation. However, you presented no evidence to support your allegation that the Respondent's actions were in retaliation for Union activity and you presented no evidence which established a nexus between the Respondent's alleged actions and

Union activity on behalf of Elenita Scarola. Mere knowledge of Union affiliation, standing alone, is not enough to establish a basis for a complaint that a 19(a)(2) violation occurred. 1/

You have not established a reasonable basis that a 19(a)(1) or (2) violation has occurred.

With respect to your alleged 19(a)(4) and (5) violations, you have presented no evidence or even specific allegations that the Respondent disciplined or otherwise discriminated against any employee for filing a complaint or giving testimony under the Order, or that the Respondent failed to accord N.F.F.E. Local 1332 appropriate recognition. I, therefore, find that you have not established a reasonable basis for complaint that the Respondent violated either Section 19(a)(4) or (5) of E.O. 11491, as amended.

Finally, with regard to your allegation that the Respondent failed to consult, confer, or negotiate with N.F.F.E., Local 1332, as required by the Order, in the complaint you state that Local 1332 "has never been given this opportunity to consult, confer, or negotiate on this level on any matters affecting employees, even though a Reduction-in-Force (RIF) was completed in June 1975." This specific allegation was not contained in the charge and, therefore, does not meet the requirements of Section 203.2 of the Assistant Secretary's Rules and Regulations. On the other hand, the specific allegations of failure to consult raised in the charge was related to changing the duties of Mmes. Driscoll and Scarola, assigning duties to another employee, and training an unqualified employee for a job for which she could not legally qualify. These allegations did not appear in the complaint and thus cannot be considered part of it. For the foregoing reasons, I find that you have not established a reasonable basis for complaint that a 19(a)(6) violation occurred.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

1/ Department of Transportation, Federal Aviation Administration, Houston Area Office, Southwest Region, Houston, Texas, A/SLMR No. 126; Veterans Administration, Veterans Benefit Office, A/SLMR No. 296.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20004, not later than the close of business Tuesday, October 14, 1975.

Sincerely,

KENNETH L. EVANS
Assistant Regional Director for
Labor Management Services

cc: Mr. Philip Barbre
Chief, Headquarters
Civilian Personnel Office
U.S. Army Material Command
5001 Eisenhower Avenue
Alexandria, Virginia 22333
(Cert. Mail No. 701496)

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

1-30-76

Mr. Jerome R. Dolezal
Hospital Director
Veterans Administration Hospital
4435 Beacon Avenue Square
Seattle, Washington 98108

643

Re: Veterans Administration Hospital
Seattle, Washington
Case No. 71-3309

Dear Mr. Dolezal:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Objections to the extent that merit was found to one of the objections filed by the Petitioner, Local 3197, American Federation of Government Employees, AFL-CIO, in the above case.

I agree with the Assistant Regional Director that the conduct of an agency or activity during the pendency of a representation election should be neutral in fact as well as appearance. However, I find, contrary to the Assistant Regional Director, that the statements made by the Chief of the Nursing Service, Jeanne H. Sherrick, at the May 8, 1975, nurses staff meeting did not violate the Activity's obligation to remain neutral during the election campaign and, consequently, that such statements did not constitute conduct which would warrant setting the election aside in the instant case. Thus, in my view, Sherrick's comments were innocuous in nature, easily recognizable by employees as such, and did not indicate or imply that the Activity was anti-union or that it was desirous of a vote against the Petitioner. Moreover, it was noted that, aside from the single incident involving Sherrick, no evidence was presented which would indicate or imply that the Activity breached its obligation of neutrality during the election campaign.

Accordingly, your request for review, seeking a partial reversal of the Assistant Regional Director's Report and Findings on Objections is granted, and the case is remanded to the Assistant Regional Director for further proceedings in accordance with the Assistant Secretary's Regulations.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

The Activity asserts that the evidence submitted by Petitioner does not meet the burden of proof necessary to establish that the conduct involved improperly affected the results of the election.

The investigation discloses that the election was conducted by the use of mail ballots which were placed in the U. S. mail on May 2, 1975, and were to be returned by the time of the ballot count at 2:45 p.m., May 19, 1975.

On May 8, 1975, Jeanne H. Sherrick, Chief, Nursing Service, conducted an employee meeting at which sixteen nurses eligible to vote in the election were in attendance. As reflected in minutes of that meeting which were subsequently distributed throughout the hospital to all nursing wards and units, the seven items for discussion included:

1. Informed Consent for surgery procedures
2. Nuclear Medicine appointments
3. Health Services Review Team visit
4. Procurement of TED Anti-Embolism Stockings
5. 3rd Quarter report on medication errors
6. Union Election
7. Discussion points brought up by staff

While it appears that the first five items on the agenda were in the nature of announcements, with little or no discussion, the minutes indicate considerable discussion resulted from the group's consideration of item 6, Union Election. In this regard, the minutes note that employees continue to ask question about the forthcoming election, notwithstanding information previously furnished them in the minutes of a May 1, 1975, meeting.1/ The minutes then paraphrase Section 1(a) of the Order and urges employees to vote.

In a June 11, 1975, statement which amplifys the May 8, 1975 minutes, Sherrick states that at the meeting she referred all questions about union benefits to Petitioner and that, after a general discussion of a strike by San Francisco nurses over essentially wages and staffing, she read to the group Sections 1(a) and II(a)(b) of the Order. 2/

1/ That portion of the May 1, 1975 minutes which relates to the election restates the employees Section 1(a) rights and urges that employees exercise their voting franchise. The minutes also refer employees to Petitioner for information as to its program, stating that the Activity is precluded from entering into a discussion of the issues.

2/ Executive Order 11838, effective May 7, 1975, amended certain portion of Executive Order 11491, including the underlined portion of Section 11(a) below:
Section I(a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.
Section 11(a) - An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times

(continued on next page)

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

SEATTLE VETERANS ADMINISTRATION HOSPITAL -ACTIVITY -AND- AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3197, AFL-CIO -PETITIONER	CASE NO. 71-3309

REPORT AND FINDINGS

ON

OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on April 17, 1975, an election by secret ballot was conducted under the supervision of the Area Director, Seattle, Washington, on May 19, 1975.

The results of the election, as set forth in the Tally of Ballots are as follows:

Approximate number of eligible voters	208
Void ballots	5
Votes cast for inclusion in non-professional unit	57
Votes cast for a separate professional unit	61
Valid votes counted	118
Challenged ballots	0
Votes cast for AFGE Local 3197	31
Votes cast against exclusive recognition	74
Valid votes counted	105

Timely objections to conduct affecting the results of the election were filed on May 27, 1975, and amended with supporting evidence on June 4, 1975.

In accordance with Section 202.20 of the Regulations of the Assistant Secretary, the Area Director has investigated the objections and has submitted his report to the undersigned. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to each of the objections herein.

Objection No. 1:

Petitioner alleges that Jeanne H. Sherrick, Chief of Nursing Service at the Activitiesmade misleading statements about Petitioner at a nurses' staff meeting on May 8, 1975 which improperly affected the results of the election.

(Footnote continued)
to confer in good faith with respect to personnel policies and practices and matters effecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency polieies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Council and which are issued at the agency headquarters level or at the level of a primary national subdivision; a nation or other controlling agreement at a higher level in the agency; and this Order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this Order, to assist in such negotiation; and execute a written agreement of memorandum of understanding.
Section II(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.
Sherrick then states that, in response to a question as to whether the Washington State Nurses Association should be contacted, she told the group she had recently attended a workshop for Nursing Service Administrators, sponsored by the Washington State Nurses Association, at which its attorney stated the WSNA was not interested in undertaking any kind of representation unless 75% of the nurses involved were WSNA members.

Sherrick states she also quoted the WSNA attorney's remarks concerning the great variety of labor organizations now representing nurses, including one unit which belonged to a meat cutter's local. Sherrick relates that she repeated the attorney's statement that this might indeed be the most appropriate union for surgeons and or nurses.

Statements of employees corroborate, in pertinent part, Sherrick's recital as contained in her June 11, 1975, statement.

The remaining item in the May 8, 1975 minutes, Discussion points brought up by the staff, notes there was a discussion of colored uniforms by nurses, and of the role of the Washington State Nurses Association in granting continuing education credits.

In Antilles Consolidated Schools, Roosevelt Roads, Ceiba, Puerto Rico, A/SLMR No. 349, the Assistant Secretary stated that "(w)hile the Order does not expressly prohibit an agency or activity from engaging in a "vote no" campaign, it is clearly established policy, as reflected in the preamble of the Order and in Section 1(a), that agency or activity management must maintain a posture of neutrality in any representation election campaign." The Assistant Secretary, in Veterans Administration Data Processing Center, Austin, Texas, A/SLMR No. 523, an unfair labor practice proceeding, adopted without comment a finding by an Administrative Law Judge that certain conduct by the activity had breached"...the neutrality and appearance of neutrality expected of an agency." (Emphasis supplied.)

applying these priciples to the instant matter, the evidence indicates that the Activity, through its Chief of Nursing Services,[3] created a forum during the critical period preceeding the election [4] at which time there was a general discussion of a recent strike action taken by similarly situated employees. The Activity thereupon informed employees of the basis upon which a rival nurses' organization would seek to represent them, and further, the Activity made statements which can be viewed as deprecating to the role of a labor organization in the medical profession.

While an assertion that the statements which give umbrage to Petitioner were in response to questions or were made in fact cannot be gainsaid, the Activity must be held responsible for the logical impact of its conduct[5] and, if such result is a loss of its appearance of neutrality in the context of a representation election, the desired laboratory standards for an election are not met.

The undersigned, while cognizant that the remarks may have been well-intentioned and may have resulted from naivete, nevertheless is of the opinion that the statements could be viewed by employees as reflective of doubts by the Activity as to the wisdom of choosing Petitioner or any labor organization as their bargaining representative, an expression of opinion which is not permitted by the Order in circumstances such as prevailed in these circumstances.

Accordingly, the undersigned, concluding that the Activity engaged in conduct which interfered with the employees' free expression of choice, sustains Objection 1.

Objection No. 2:

The Petitioner alleges that Ronald Chase, Assistant Personnel Officer, placed undue restrictions on the distribution of union literature and the posting of notices during the election campaign in that Chase would not allow the posting of Petitioner's literature on Activity bulletin boards, as had been allowed during the organizing campaign, and that Petitioner was not allowed to leave literature on the lunch tables in the nurses' stations and ward lunch areas.

The investigation discloses that the Activity permitted Petitioner to post campaign materials on its bulletin boards for an approximate four week period ending March 10, 1975. Thereafter, Petitioner posted additional election material which were removed on about May 9, 1975 pursuant to instructions from the Activity. At that time, the Activity also instructed Petitioner to discontinue leaving election materials in ward areas used for duty purposes. Moreover, a written May 12, 1975 Petitioner request to post election materials on Activity bulletin boards was denied by the Activity on that date.

The Assistant Secretary has stated in Los Angeles Air Route, Traffic Control Center, Federal Aviation Administration, A/SLMR No. 283, that the use of bulletin boards is a priviledge which ordinarily may be granted or denied by an agency or activity. It would follow, therefore, that the Activity in the instant matter could initially grant Petitioner use of its bulletin boards for a specified but limited period of

3/ There is no contention or evidence that Jeanne N. Sherrick, Chief, Nursing Service, lacks the authority of a supervisor as defined in Section 2(c) of the Order.
4/ The Petition was filed March 18, 1975. See Report No. 58
5/ Department of Defense, Arkansas National Guard, A/SLMR No. 53.

time but, thereafter, refuse to extend or grant additional posting privilege[6/], in the absence of a contention or evidence that consideration of scheduling or geographic dispersion precluded Petitioner from otherwise bringing its message to the electorate.

Similarly, the undersigned concludes that the prohibition the Activity placed on Petitioner against distributing campaign materials in work areas was consistant with the Assistant Secretary's finding in Federal Aviation Administration, New York Air Route Traffic Control Center, A/SLMR No. 184; and Charleston Naval Shipyard, A/SLMR No. 1.

Accordingly, the undersigned concludes Objection 2 is without merit and is hereby overruled.

Objection Nos. 3 and 4:

Petitioner, in Objection No.3, contends that the Activity failed to include blank inner envelopes in a number of mail ballots and, in Objection No. 4, the Activity failed to send ballots to certain eligible voters.

The Activity limits it statement of position to the assertion that the matter raised in Objection Nos. 3 and 4 were not raised within the specified period for filing objections and, therefore, should be considered as untimely filed.

The investigation discloses Petitioner, on May 27, 1975, initially filed objections which were limited to the allegations raised in Objection Nos. 1 and 2. Thereafter, on June 5, 1975, the Area Office received an additional submission from Petitioner which, for the first time, raised the matters which are asserted as objectionable in Objection Nos. 3 and 4.

As the Assistant Secretary stated in Department of the Treasury, Bureau of Customs, Boston, Mass., A/SLMR No. 169, "it is expected that in its initial submission, the objecting party will state specifically the conduct that is being objected to, together with a statement of the reasons therefor.

From the foregoing, it is apparent that the subject matter of Objection Nos. 3 and 4 was not contained in the originally filed objections and accordingly, it is concluded that Objection Nos. 3 and 4 are untimely.

Moreover, with respect to the substantive issues raised in these objections, Petitioner lists the names of four individuals who allegedly received mail ballots without an enclosed blank envelope and lists the names of three individuals who allegedly did not receive a mail ballot. However, Petitioner failed to submit any supporting evidence, such as signed statements, in support of these bare allegations. VA Data Processing Center, Austin, Texas, Request for Reviews 518, 521.

6/ The undersigned does not view this four week period as establishing a practice or condition of employment, where all parties were put on notice at the outset as to the temporary nature of the posting privilege. CF IRS, Office of the Regional Commissioner, Western Region, A/SLMR No. 473.

Accordingly, for the reasons set forth above, the undersigned overrules Objection Nos. 3 and 4.

Having found that Objection No. 1 has merit, the parties are advised hereby that the election held May 19, 1975 is set aside and a rerun election will be conducted as early as possible but not later than 30 days from the date below, absent timely filing of a request for review.

Pursuant to Section 202.20(f) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which its based and must be received by the Assistant Secretary not later than the close of business October 1, 1975.

Labor-Management Services Administration

Gordon M. Byrholdt

GORDON M. BYRHOLDT
Assistant Regional Director
San Francisco Region
U. S.Department of Labor
450 Golden Gate Avenue, Room 9061
San Francisco, California 94102

Dated: September 18, 1975

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

2-3-76

644

Edward J. Hickey Jr., General Counsel
International Association of Firefighters
Mulholland, Hickey and Lyman
Suite 400, 1125 Fifteenth St., N.W.
Washington, D.C. 20005

Re: Warner Robins Air Logistics Center
Robins Air Force Base, Georgia
Case No. 40-6508(CA)

Dear Mr. Hickey:

This is in connection with your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

I find that the request for review is procedurally defective because it was filed untimely. Thus, the Assistant Regional Director issued his decision in the instant case on December 1, 1975. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary no later than the close of business on December 16, 1975. Your request for review was dated and received by the Assistant Secretary on December 18, 1975. While you assert that additional time was needed in which to file a request for review seeking reversal of the Assistant Regional Director's decision, there is no indication that you sought an extension of time in which to file a request for review in accordance with Section 203.8(c) and 202.6(d) of the Assistant Secretary's Regulations. Moreover, it appears from your certificate of service that you failed to serve a copy of your request for review on the Assistant Regional Director as required under Section 202.6(d) of the Assistant Secretary's Regulations.

Accordingly, under the foregoing circumstances, the merits of the subject case have not been considered, and your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. — ROOM 300

December 1, 1975 ATLANTA, GEORGIA 30309

Mr. Geoffrey N. Zeh, Attorney
Mulholland, Hickey & Lyman
Suite 400, 1125 Fifteenth Street, N. W.
Washington, D. C. 20005

Re: Warner Robins Air Logistics Center
Robins Air Force Base, Georgia
Case No. 40-6508(CA)

Dear Mr. Zeh:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Investigation discloses that Local F-107, International Association of Fire Fighters (IAFF) was at all times material herein the exclusive representative of a unit of firefighters of Respondent. In October 1974 several firefighter positions were vacant and personal interviews were conducted by the Fire Chief. Anthony B. Caldwell applied for a firefighter position, was interviewed on October 25, 1974 but was not selected for any of the positions. Caldwell, a non-Federal Government employee, formerly worked for the Macon, Georgia Fire Department and was the President of Local 634, IAFF which represents the firefighters employed by the City of Macon, Georgia. Caldwell is also President of the Professional Fire Fighters of Georgia.

You allege that Caldwell was not hired because of his activities on behalf of IAFF and the refusal to hire Caldwell was for the purpose of discouraging membership in IAFF and Local F-107, in violation of Section 19(a)(1) and (2) of the Order.

Respondent denies that an unfair labor practice was committed. Additionally, it raises several issues of procedure, timeliness, and the right of the IAFF national office to file. I shall deal with those procedural matters first.

Respondent contends that the national office of IAFF has not filed a charge as required by 203.2(a) of the Regulations. It states that Local F-107 is the exclusive representative of the employees of the Respondent; Complainant is not a labor organization as defined by Section 2(e) of the Executive Order and is therefore not authorized to file a complaint on its own behalf.

With respect to the argument that the national IAFF did not file a precomplaint charge, it should be noted that the same Counsel who filed the precomplaint charge of April 23, 1975 also filed the complaint herein. The allegations in that charge and the allegations in the complaint are essentially the same allegations arising from the same set of circumstances. Respondent has not demonstrated that the complaint's allegations constitute surprise or that Respondent has not been afforded adequate opportunity to investigate the allegations in the the charge. Accordingly, Respondent has not been prejudiced in any way because the charging party and the complainant may not have been precisely the same party.

Whether the charging party of the April 23, 1975 charge was Local F-107, IAFF or Caldwell is not controlling; the fact that the national office of IAFF was not the charging party does not constitute the type of deviation from the regulations which would warrant dismissal of the instant complaint on procedural grounds. I further find that Complainant is a labor organization within the meaning of Section 2(e) of the Order and, as such, is qualified to file under Section 203.1 of the regulations. The fact that a labor organization does not represent employees in a unit nor the fact that it is not seeking to represent employees in a unit does not disqualify a labor organization from filing a complaint, provided, of course that it falls within the definition of Section 2(e) of the Order.

Next, Respondent urges dismissal on the grounds that the complaint has not been filed on behalf of an employee who is an employee within the meaning of Section 2(b). I find that the complaint was not necessarily filed on behalf of Caldwell, a non-employee of the Federal Government. The complaint is filed on behalf of IAFF, the complainant herein. IAFF has an independent right to file separate and apart from any right on behalf of Caldwell.

Respondent further contends that the complaint was not filed within 60 days of the final decision to the charge. If that argument is adopted, it must be based on the presumption that the November 6, 1974 "grievance" was in fact the charge and the November 8, 1974 answer was the final decision. Not only was the November 8, 1974 answer not designated as the final decision, even a cursory scrutiny of the answer shows that Respondent was uncertain whether the November 6, 1974 grievance was to be treated as a grievance or as a charge. For example, Respondent's November 8 letter states, in part: "If you are filing a grievance, you should specify the particular provision of the Labor Agreement which has been violated" and..."If, on the other hand, you are raising the issue as an unfair labor practice, you should specify which provision of Executive Order 11491 has been violated by management." Based on the above, I find that the November 6, 1974 "grievance" was not a precomplaint charge; a fortiori, the November 8, 1974 answer is not deemed to be final decision within the meaning of Section 203.2(b)(2) of the regulations.

The question then arises. Was the November 6, 1974 "grievance" a grievance within the meaning of Section 19(d)? If, as Respondent also contends that 19(d) is dispositive of the complaint because an alternative procedure was used to resolve the matter covered by the complaint, i.e., the grievance procedure, it must be clearly established that the November 6 "grievance" was, in fact, a grievance. Not only was Respondent uncertain as to whether the November 6 "grievance" was in fact a grievance but as Caldwell was not included in a unit of recognition, Local F-107, IAFF could not properly raise the Caldwell issue under the grievance procedure. Accordingly, as the issue could not properly be raised under the grievance procedure, Respondent may not now urge dismissal on the grounds that Section 19(d) bars the complaint.

Respondent states that no charge was filed specifically alleging violation of Section 19(a)(1), i.e., that an "employee" has been interferred with, restrained or coerced. I find that it is not necessary that the charge be specific as to which sections of the Order are alleged to have been violated. It is sufficient that the charged party be advised of the facts constituting the unfair labor practice, including the time and place of occurrence of the unfair labor practice, including the time and place of occurrence of the particular acts. Therefore this argument is no basis for dismissal.

I now turn to the basis of the complaint. It is alleged that Caldwell, a non-Federal Government employee was not hired because of his union activities. Investigation discloses that Respondent may have refused to hire Caldwell because he was a college student. No evidence was furnished that Respondent's failure to hire Caldwell was because of his activities on behalf of Local F-107, IAFF or because of his Presidency of Professional Fire Fighters of Georgia. Assuming the statements of Caldwell, Schell, Pitts and Suddeth accurately reflect what took place in connection with Respondent's failure to hire Caldwell, the substance of the evidence is that the Fire Chief asked Caldwell if the strike in Macon was a wildcat or an organized strike. Even if the Fire Chief may have told Caldwell that he would not tolerate strikes or slowdowns or that he did not want employees working who had "something in their craw," such statements do not constitute evidence to warrant a conclusion that Respondent's failure to hire Caldwell was because of his past or present union activities. The statements furnished by Complainant do not present a prima facie case in support of the allegations. At best, there may be a reasonable basis for concluding that Caldwell was not offered the job because the Fire Chief objected to the employment of college students. There is no prima facie evidence that Caldwell was denied employment because of his activities on behalf of Local F-107 or any other labor organization.

Section 1(a) of the Executive Order provides in part that:

> Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization.... (emphasis supplied)

Caldwell was not an employee of the Federal Government at the time he engaged in union activities which are alleged to have been the reason Caldwell was not hired. Therefore, he was not engaged in protected activities guaranteed by Section 1(a).

There is no evidence of any independent Section 19(a)(1) violation. Having found no basis for a 19(a)(2) violation, I find no basis for a derivative 19(a)(1) violation.

I am, therefore, dismissing the complaint in this matter.

You requested that an independent investigation be conducted. Based on the circumstances involved and in the absence of a prima facie showing in support of the allegations, no independent investigation was deemed necessary.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business December 16, 1975.

Sincerely,

LEN R. BRIDGES
Assistant Regional Director
for Labor-Management Services

cc:

Major General Ralph T. Holland
Commander
Warner Robins Air Logistics Center
Robins Air Force Base, Georgia
31098

Mr. General Granvill, President
Local F-107, International Association
of Fire Fighters, AFL-CIO/CLC
Route 1, Box 289
Bonaire, Georgia 31005

Mr. Michael A. Deep, Attorney-Advisor
Office of the Staff Judge Advocate
Warner Robins Air Logistics Center
Robins Air Force Base, Georgia 31098

Ms. Marie C. Brogan
President
National Federation of Federal
Employees, Local 1001
P. O. Box 1935
Vandenberg AFB, California 93437

FEB 23 1976

Re: Vandenberg AFB, SAMTEC
Case No. 72-5322

Dear Ms. Brogan:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are not warranted inasmuch as a reasonable basis for the complaint, as amended, has not been established. In reaching this determination it was noted particularly that the Complainant did not present any evidence to show that the adjustment of April 7, 1975, did not substantially remedy any alleged violation of the Order, or that the provisions of the adjustment have not been effectuated.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

September 16, 1975

Ms. Marie C. Brogan
President
National Federation of Federal
Employees, Local 1001
P. O. Box 1935
Vandenberg AFB, CA 93437

Re: Vandenberg AFB, SAMTEC - NFFE, LU 1001
Case No. 72-5322

Dear Ms. Brogan:

The above captioned case alleging a violation of Executive Order 11491, as amended, has been considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard I noted that the Activity has reappraised the clerical and secretarial employees in compliance with the informal settlement agreement entered into by the parties on April 7, 1975. Further, there is no evidence or contention that the parties' informal settlement has not substantially remedied any alleged violations herein. See Vandenberg Air Force Base, FLRC 74A-77.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than the close of business September 22, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

2-23-76

646

Mr. Michael J. Massimino
President, Local Union 1340
National Federation of Federal
Employees
P. O. Box 86
Pomona, New Jersey 08240

Re: Federal Aviation Administration
National Aviation Facilities
Experimental Center (NAFEC)
Atlantic City, New Jersey
Case No. 32-4029(CA)

Dear Mr. Massimino:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (2), and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted as the meetings involved herein were not formal discussions within the meaning of Section 10(e) of the Order. Thus, the evidence establishes that the sole purpose for the subject meetings was to investigate an allegation of employee misconduct. In this context, I find that the subject matter of the meetings did not involve grievances, personnel policies and practices, or matters affecting general working conditions of employees in the unit within the meaning of Section 10(e) of the Order. Rather, in my view, the meetings pertained merely to the application of the Activity's regulations to individual employees and had no wider ramifications for other employees in the unit. Cf. Department of Defense, National Guard Bureau, Texas Air National Guard, A/SLMR No. 336.

Accordingly, and noting the absence of any evidence that the affected employees requested union representation at the meetings involved, or that the Activity's conduct was discriminatorily motivated, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, N.Y. 10036

In Reply refer to:
Case No. 32-4029(CA)

Mr. Michael J. Massimino, President
National Federation of Federal Employees, Ind.
Local Union 1340
Post Office Box 86
Pomona, New Jersey 08240

Dear Mr. Massimino:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your complaint alleges that the Air Transportation Security Staff of the National Aviation Facilities Experimental Center (NAFEC), Federal Aviation Administration, while acting as the Agent of, and at the request of the Logistics Division of the same activity, conducted formal discussions with several employees of the Logistics Division without giving the exclusive representative an opportunity to be present. Further, your complaint alleges that during the course of the formal discussions the employees, who were questioned about allegations made against them by another employee, were not advised of their right to have a representative of the union present. It is alleged that the above acts, were committed in violation of Sections 19(a)(1),(2), and (6).

In response to your complaint, the Respondent denies that it has violated Section 19 of the Order. Specifically, Respondent maintains that the meetings complained of were investigatory or factfinding in nature only and were undertaken in response to a rank and file employee's allegation that other employees were violating established regulations.

Respondent maintains, further, that the meetings did not concern changes in personnel policy or practices or matters affecting general working conditions of employees in the Unit.

Based upon the evidence which has been submitted with your complaint, I find that a reasonable basis upon which the complaint could be referred to a hearing has not been established. Three statements from three unit employees accompanied the charge and complaint. Although these tend to show that there was a degree of formality to the discussions between these employees and high level management officials, they fail to demonstrate that the discussions went beyond an inquiry into the truth of the allegations made by a fellow worker. The evidence does not demonstrate that the interviews had any wider ramifications than a fact finding mission to determine whether the Activity's regulations had been violated. With regard to your allegation that each of the interviewees had not been advised of his right to a union representative being present, there is also no basis. This right, which is an individual one recently affirmed by the courts in the private sector, does not have an equivalent counterpart in the public sector. Even if the right to union counsel existed, the evidence fails to establish that each interviewee had made a request to have a union representative present prior to being interviewed. Finally, with regard to your allegation that by its acts the Respondent discriminated against unit employees to encourage or discourage union membership, the evidence does not support this contention. The evidence only proves that the investigation was initiated because of the allegations of a fellow unit employee. There is absolutely no showing of either an anti-union animus or that the subject investigation was handled any differently from similar investigations involving non-union or non-unit employees.

I am, for the reasons given, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor Management Relations, ATT: Ofice of Federal Labor Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business_____.

Very truly yours,

Benjamin B. Naumoff
Assistant Regional Director
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

2-23-76

Mr. Harold F. Barrett, Jr. 647
Grand Lodge Representative
International Association of Machinists
and Aerospace Workers
3133 Braddock Street
Kettering, Ohio 45420

Re: U. S. Air Force, 2750th Air Base Wing,
Wright-Patterson Air Force Base, Ohio
Case No. 53-8004(CA)

Dear Mr. Barrett:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(1), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Assistant Regional Director, I find that further proceedings in this matter are unwarranted in that a reasonable basis for the complaint has not been established. Thus, insufficient evidence has been presented to establish that the Respondent failed to accord the Complainant appropriate recognition or refused to meet and confer in good faith upon request. Moreover, with respect to the Respondent's assertion that the provisions of the parties' negotiated agreement, including the negotiated grievance procedure, terminated with the expiration of the agreement, it was noted that there is no evidence to establish that the Respondent, in fact, refused to process any grievances subsequent to the expiration of the agreement.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS
CHICAGO REGION

U. S. AIR FORCE, 2750TH AIR BASE WING,
WRIGHT-PATTERSON AIR FORCE BASE,
DAYTON, OHIO,

Respondent

and

Case No. 53-8004(CA)

LOCAL 2065, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Complainant

The Complaint in the above-captioned case was filed on May 28, 1975, in the office of the Cleveland Area Director. It alleges a violation of Sections 19(a)(1), (5), and (6) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, and I shall dismiss the Complaint in this case, as no reasonable basis has been established.

The Complaint alleges that the Respondent (hereinafter referred to as the Activity) violated Sections 19(a)(1), (5), and (6) of the Order by refusing to negotiate in good faith since January 27, 1975, refusing to recognize the Complainant since April 8, 1975, and refusing to honor the parties' contract after its expiration date.

There is no dispute between the parties as to the essential facts of the case. The parties began negotiations for a renewal contract on January 27, 1975. The Activity refused to agree to an extension of the Agreement, while initially offering only 2 hours per week for negotiations. Negotiations between January 27, 1975, and April 8, 1975, included the assistance of the Federal Mediation and Conciliation Service (FMCS) on two separate occasions.

Prior to the expiration of their contract, the parties negotiated on ground rules and substantive issues, both with and without the assistance of FMCS, for a total of approximately sixty-seven hours. The Activity at all times refused to agree to the extension of the contract, although the issue was discussed at several sessions, including the sessions with the FMCS. The parties entered into an interim dues withholding agreement prior to the expiration of the contract on April 8, 1975.

The Complainant contends that the Activity's refusal to bargain in good faith is evidenced by its refusal to extend the contract beyond its

expiration date while limiting negotiation time to two hours per week in its initial proposal. I cannot agree. The record is devoid of any showing that these two actions were in any way connected, and the record further indicates that the Activity later offered additional time for negotiation and in subsequent sessions the parties did in fact negotiate for more than an average of two hours per week. Moreover, the Complainant contributed to a delay in negotiations by at one point refusing to negotiate while awaiting FMCS assistance.

Although the Activity did refuse to extend the agreement, it discussed the issue on several occasions and willingly used third party assistance, the FMCS, to discuss the matter. Good faith bargaining does not require the Activity to agree or make concessions. 1/ There is no evidence that would indicate the Activity did anything beyond maintaining a firm position in its refusal to agree to an extension.

The Complainant also alleges that the Activity unilaterally changed working conditions by its general refusal to apply the contract after its expiration date. Although National Labor Relations Board (NLRB) rulings are not binding on the Assistant Secretary for Labor Management Relations in the public sector, I believe the rationale in the Heart of America Meat Dealers Association is applicable to the instant case. 2/ In that case, the NLRB found that an Employer's notice to the union during contract negotiations that, in view of the expiration of the parties' contract, grievance, union security, and checkoff provisions were no longer in existence, did not constitute unilateral change in working conditions in violation of LMRA, since changes occurred by operation of law and not by unilateral action of the employer. Moreover, the Activity here, by letter of April 9, 1975, stated: ". . . assure you we will continue to honor the Union's exclusive recognition, and we will abide by the requirements of the Order to meet and confer with the Union . . ."

I, therefore, cannot agree with the Complainant's assertion that the Activity violated Section 19(a)(6) of the Order by its general refusal to apply the contract after April 8, 1975, or by its refusal to apply the grievance procedure embodied in the expired contract.

Nor do I agree with the Complainant's allegation that the Activity refused to recognize the Union after April 8, 1975, in violation of Section 19(a)(5). The Complainant has not offered any evidence to substantiate its allegation. Moreover, the record of events after the contract expired indicates the contrary; there was an interim dues withholding agreement in effect, there were two meetings between the parties, and the Activity assured the Complainant by its letter of April 9, 1975, quoted above, that it would continue to recognize the Complainant as exclusive representative.

1/ See Headquarters, United States Army Aviation Systems Command, A/SLMR No. 168.
2/ See Heart of America Meat Dealers Association, 168 NLRB 834, 67 LRRM 1004.

Having considered carefully all the facts and circumstances in this case, including the charge, the Complaint, the positions of the parties, and all that which is set forth above, the Complaint is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such a request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, United States Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business September 19, 1975.

Dated at Chicago, Illinois this 4th day of September, 1975.

Paul a. Barry

Paul A. Barry
Acting Assistant Regional Director
United States Department of Labor, LMSA
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

2-24-76

648

Mr. Ande Abbott
President
Federal Employees Metal Trades
Council
P. O. Box 20310
Long Beach, California 90801

Re: Long Beach Naval Shipyard
Department of the Navy
Long Beach, California
Case No. 72-5352(CA)

Dear Mr. Abbott:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (2), (3), and (6) of Executive Order 11491, as amended.

Contrary to the Assistant Regional Director, I find that the instant complaint was timely filed as it alleged violations of the Order based on the denial of promotions, and as the latest promotion action of the Respondent occurred in January 1975. However, with respect to the merits of the allegations, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings are unwarranted. Thus, in my view, the evidence submitted was insufficient to establish a reasonable basis for the allegation that the failure to promote Frank Thomas was based on anti-union considerations.

Accordingly, and noting the absence of any evidence which could support a reasonable basis for the Section 19(a)(3) and (6) allegations in the instant complaint, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

October 16, 1975

Mr. Ande Abbott, President
Federal Employees Metal Trades Council
P. O. Box 20310
Long Beach, CA 90801

Re: Long Beach Naval Shipyard FEMTC Case No. 72-5352

Dear Mr. Abbott:

The above captioned case alleging a violation of Executive Order 11491, as amended, has been considered carefully.

It does not appear that further proceedings are warranted inasmuch as the complaint was not filed timely in accordance with 203.2(a)(2) of the regulations of the Assistant Secretary. In this regard, I note that Complainant alleges no instance of a discriminatory failure to promote Frank Thomas within six months of the filing of the unfair labor practice charge. Thus, the most recent instance of alleged discrimination occurred on June 13, 1974 nine months prior to the March 17, 1975, charge.

Moreover, with respect to the substantive issues in the case, no evidence was submitted by Complainant with respect to the union involvement of Frank Thomas since his 1972 Presidency nor is there evidence of animus by Respondent with respect to his protected activity. Finally, no evidence was submitted which would support the contention that the failure of Thomas to rank highest on four occasions was due to a discriminatory manipulation of the ranking process.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(e) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than the close of business on October 30, 1975.

Sincerely,

Gordon M. Byrkolat

Gordon M. Byrkolat
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

2-24-76

Mr. Gerald C. Tobin
Staff Attorney
National Federation of Federal Employees
1016 16th Street, N. W.
Washington, D. C. 20036

649

Re: American Federation of Government Employees, AFL-CIO, Local 1904
(U. S. Army Electronics Command, Fort Monmouth, New Jersey)
Case No. 32-4180(CO)

Dear Mr. Tobin:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, in my view, insufficient evidence was presented to establish a reasonable basis for the allegation that the contents of the letter involved herein, allegedly distributed by the American Federation of Government Employees, constituted improper interference, restraint, or coercion with respect to employee rights assured by the Order.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, N.Y. 10036

SEPTEMBER 10, 1975 In reply refer to Case No. 32-4180(CO)

Mr. Gerald C. Tobin, Staff Attorney
National Federation of Federal Employees, Ind.,
1737 H Street, N.W.
Washington, D.C. 20006

Re: Local 1904
American Federation of Government
Employees, AFL-CIO

Dear Mr. Tobin:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your complaint alleges that agents of Local 1904, American Federation of Government Employees, AFL-CIO, caused a letter to be printed and distributed on or about February 24, 1975 to members of Local 476, National Federation of Federal Employees, Ind., and that since the letter contained unsupported allegations concerning Local 476 officers and their administration of Local affairs, those employees who received the letter were interfered with, restrained, and coerced in the exercise of their protected rights, in violation of Section 19(b)(1) of the Order.

In response to the complaint, the Respondent has maintained that it had no prior knowledge of the contents or distribution of the letter in question. In addition, it is the Respondent's position that the Complainant has failed to establish, in the sending of the letter, an act of interference, restraint, or coercion within the meaning of Section 19(b)(1).

Under the circumstances, I find, based on the evidence you have furnished in support of your complaint, that the letter allegedly sent by Local 1904 does not contain information or statements the distribution of which could be construed as violative of Section 19(b)(1). Thus, although you contend that the letter served to cause a chilling effect upon the exercise of the rights of those members who received the letter, I can find nothing in the letter which could be perceived as coercive, nor does the letter contain threats of action which might affect any of the members or their conditions of employment for exercising the right to join or assist a labor organization or to refrain from such activity. In my view, the language of the disputed letter represents an attempt to persuade employees who are not members of Local 1904 to acquire membership therein, and the statements contained in the letter, whether true or false, appear to be no more than arguments and allegations advanced for the particular purpose of furthering an organizing effort. Such communications, while they may be personally offensive to certain individuals, in and of themselves do not fall within the proscriptions of Section 19(b)(1). In addition, I note that you have submitted no evidence, beyond the mere assertion of a violation, that the disputed letter actually caused members of Local 476 to be interfered with, restrained, and coerced in the exercise of their rights assured by the Order.

I am, therefore, dismissing the complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business 9/26/75

Sincerely Yours,

Benjamin B. Naumoff
Assistant Regional Director
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

2-25-76

650

Mr. Phillip R. Kete
President, National Council of
CSA Locals
American Federation of Government
Employees, AFL-CIO
C/o Community Services Administration
1200 19th Street, N. W.
Washington, D. C. 20506

Re: Community Services Administration
Dallas, Texas
Case No. 63-5997(GA)

Dear Mr. Kete:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability, in the above-named case.

In agreement with the Acting Assistant Regional Director, and based on his reasoning, I find that the grievance herein involves a matter for which a statutory appeal procedure exists. Thus, in accordance with Section 13(a) of the Order, the grievance is neither grievable nor arbitrable under the terms of the parties' negotiated agreement.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

COMMUNITY SERVICES ADMINISTRATION, REGION VI,
Dallas, Texas,
Applicant,

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO,
LOCAL UNION 2649,
Dallas, Texas,
Respondent

Case No. 63-5997(GA)

REPORT AND FINDINGS
ON
APPLICATION FOR DECISION ON GRIEVABILITY

Upon an Application for Decision on Grievability or Arbitrability duly filed under Section 6(a)(5) of Executive Order 11491, as amended, and Part 205 of the Rules and Regulations of the Assistant Secretary, an investigation of the matter has been conducted by the Area Director and I have contacted the U. S. Civil Service Commission (copy of reply attached).

Under all of the circumstances, including the positions of the parties and of the Civil Service Commission and the facts revealed by the investigation, I find and conclude as follows:

The application for decision was filed on July 21, 1975, at the Dallas Area Office, concerning the request by three subject applicant employees that they be promoted according to Article 11, Section 8 of their Collective Bargaining Agreement (CBA) in effect.

The grievance was filed on May 6, 1975, by the union under the CBA in effect through March 31, 1976. The union sought arbitration but was refused by the applicant, who contended the issue was subject to a statutory classification appeal procedure. The union contends the issue is a clear violation of the equal pay for equal work principle as stated in Article 11, Section 8, of the CBA.

In the grievance, the union stated that the only acceptable remedy would be the promotion of the employees in question and the downgrading of duties was specifically rejected as a possible remedy.

By letter dated September 12, 1975, the U. S. Civil Service Commission ruled that the questions raised by the grievance are subject to resolution by a statutory appeal procedure. The questions are: (1) what is the correct clarification for the full performance or journeyman level in the Community Development Specialists occupation, and (2) are the employees, on whose behalf the grievance was filed, actually working at the full performance level?

This procedure is grounded in section 5112 of Title 5, U. S. Code, which accords the Commission final and binding authority regarding the classification of positions. Section 5101 of the same title establishes the principle of equal pay for equal work as the very cornerstone of the classification system the Commission is charged with administering.

This section also makes clear that the principle is to be achieved by comparing positions with standards issued by the Commission. Detailed procedures for the filing of classification appeals -- both through the agency and directly with the Commission -- may be found in Subpart F of Part 511 of the Code of Federal Regulations.

Based on all the foregoing, I conclude that this matter is not grievable or arbitrable because there exists a statutory classification appeal procedure for its resolution.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business November 25, 1975.

Labor-Management Services Administration

John C. Jackson, Acting Assistant Regional Director for Labor-Management Services
Kansas City Region

Dated: November 10, 1975

Attachments

U.S. DEPARTMENT OF LABOR

OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

2-25-76

Kathryn W. Fulcher, President
American Federation of Government Employees
Air Force Lodge 1092, AFL-CIO
759 South Harrison Street
Arlington, Virginia 70164

651

Re: U. S. Air Force, 1143rd Air Base Squadron
Case No. 22-5963(CA)

Dear Ms. Fulcher:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. Thus, while I agree with your contention that the matter in issue does not involve a disagreement over the interpretation of the parties' negotiated agreement, I find that a reasonable basis for the complaint had not been established. Thus, in my view, the failure of the Activity to issue unescorted passes to non-employee union representatives did not, standing alone, constitute a violation of the Order. In this connection, it was noted particularly that no evidence was presented to establish that the Complainant's representatives were denied access to the unit employees, or that the Activity's escort policy was inconsistent with any past practice or was based on anti-union considerations. Cf. Department of the Navy, Puget Sound Naval Shipyard, A/SLMR No. 415.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

August 12, 1975

Ms. Katheryn Flucher, President
AFGE/GAIU Council of HQ USAF Locals,
AFL-CIO
759 South Harrison Street
Arlington, Va. 22204
(Cert. Mail No. 701764)

Re: 1143d Air Base Squadron
U. S. Air Force
Case No. 22-5963(CA)

Dear Ms. Flucher:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your complaint alleged that the Activity violated Section 19(a)(1) and (6) of the Executive Order when it refused to grant an unescorted Pentagon building pass for Mr. William E. Martin, Jr., Second Vice President of AFGE Local 1092 so that he could work out of the Council's office in the Pentagon building and assist bargaining unit employees in matters related to Executive Order 11491, as amended, and the negotiated agreement.

The Union asserts that the contract provides authority for the issuance of an unescorted Pentagon building pass for its non-employee representative. The Activity asserts, likewise, that the agreement is the authority for barring the issuance of a non-escorted Pentagon building pass for non-employee representatives of the Union. No evidence was presented to support the inference that the refusal to issue the pass desired by your organization was for an invidious purpose within the meaning of Section 19(a)(1) of the Executive Order or that the instant refusal to issue the pass was a change in personnel policies and practices. In these circumstances, therefore, I find that, consistent with the Report on a Ruling of the Assistant Secretary, Report No. 49 1/, there is disagreement over the interpretation of an existing collective bargaining agreement which provides a procedure for resolving a disagreement, and the issues should not be considered in the context of an unfair labor practice.

1/ Copy enclosed.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business August 27, 1975.

Sincerely,

Frank P. Willette

Frank P. Willette
Acting Assistant Regional Director
for Labor-Management Services

Enclosure

cc: Colonel Troy G. Alcorn
U. S. Air Force
1143d Air Base Squadron
The Pentagon
Washington, D.C. 20330
(Cert. Mail No. 701765)

bcc: Dow E. Walker, AD/WAO
S. Jesse Reuben, OFLMR

February 15, 1972

UNITED STATES DEPARTMENT OF LABOR
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
REPORT ON A RULING OF THE ASSISTANT SECRETARY
PURSUANT TO SECTION 6 OF EXECUTIVE ORDER 11491

Report Number 49

Problem

A request for review was filed seeking reversal of the Acting Regional Administrator's dismissal of a complaint alleging violations of Section 19(a) of the Executive Order stemming from an Activity's refusal to accept a labor organization's interpretation regarding the number of stewards the Activity was required to recognize under an existing collective bargaining agreement. The evidence indicated a disagreement between the parties over the interpretation of the agreement and that the agreement provides a grievance and arbitration procedure for resolving such disputes.

Decision

It was concluded that where a complaint alleges as an unfair labor practice, a disagreement over the interpretation of an existing collective bargaining agreement which provides a procedure for resolving the disagreement, the Assistant Secretary will not consider the problem in the context of an unfair labor practice but will leave the parties to their remedies under their collective bargaining agreement.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

2-25-76

652

Mr. Joseph B. Rosenberg
President
American Federation of Government
Employees, Local 1923
Social Security Building
Room 1-0-21
6401 Security Boulevard
Baltimore, Maryland 21235

Re: Social Security Administration
Baltimore, Maryland
Case No. 22-6272(AP)

Dear Mr. Rosenberg:

This is in connection with your request for review seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

I find that your request for review was not timely filed pursuant to Section 205.6(b) and 202.6(d) of the Assistant Secretary's Regulations. Thus, while you were granted an extension of time until November 10, 1975, in which a request for review could be received by the Assistant Secretary, your request for review, postmarked November 11, 1975, was not received timely.

Accordingly, the merits of this matter have not been considered and your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND

Activity/Respondent

and

Case No. 22-6272(AP)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO
LOCAL 1923

Applicant

REPORT AND FINDING
ON
GRIEVABILITY OR ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

The Social Security Administration, Baltimore, Maryland and the American Federation of Government Employees (AFGE), Local 1923 are parties to a negotiated agreement effective September 24, 1974 through July 1, 1977 covering a unit of "All nonsupervisory General Schedule and Wage Grade employees of the Social Security Administration Headquarters Bureau and Offices, including professionals, in the Baltimore SMSA."

On March 19, 1975, the question of union representation at special counseling sessions under Article 15, Section J-2 of the negotiated agreement was raised by a unit employee and forwarded to management for clarification.

Mr. Irving Becker, Director of Labor Relations, informed the Union on March 24, 1975 that it did not have the right to be present during the

Special counseling sessions under Article 15, Section J-2 of the agreement because those sessions were not "formal discussions" as defined by the Assistant Secretary under Section 10(e) of Executive Order 11491, as amended. On April 28, 1975, the parties met and discussed the issue and, on May 2, 1975, Management confirmed that the special counseling sessions were not "formal discussions" and the Union had no right to be present. On May 29, 1975, the Union requested the matter be submitted to arbitration under Article 24, Section B of the agreement and, on June 9, 1975, Management advised the Union that the issue did not concern the interpretation or application of the agreement between the parties but, rather, concerned the interpretation of Section 10(e) of the Executive Order and, therefore, was not a proper matter for arbitration.

Article 15, Section J-2 reads in part:

> "If an employee has appeared on at least five best-qualified lists within a 2-year period and has not been selected for promotion, he or she will, upon request, receive special counseling."

Evidence has revealed that the question raised by the Union concerning its rights to attend special counseling sessions under Article 15, Section J-2 of the contract does, indeed, involve the interpretation of Section 10(e) of the Order and is not appropriate under the arbitration proceedings in the agreement.

Both parties agree, and it is undisputed, that the issue involves the interpretation of "formal discussions" under Section 10(e) of the Order which states that:

> "The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit."

The Union argues that the counseling sessions under Article 15, Section J-2 are "formal discussions" and, thus, they have a right to be present while the Activity contends that they are not "formal discussions" as defined by the Assistant Secretary under Section 10(e) of the Order and union attendance is not allowed.

In the application before us for a decision on arbitrability, the Union referred to Section 10(e) of the Order as dispositive of the dispute, stating that "the type of formal discussion described in Section 10(e) of the Order is of the type mentioned in Article 6, Section B of this Agreement and clearly intended to be held under Article 15, Section J-2." And, further, that "the citation of Section 10(e) of the Order is an argument to present to an arbitrator..." Article 6, Section B is a reiteration of Section 10(e) of the Order:

> "The Union shall be given the opportunity to be represented at formal discussions between the Administration and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees."

This is further evidence that the issue concerns the definition of "formal discussion" as defined by the Assistant Secretary under Section 10(e) of the Order and involves an interpretation of the Order by the Assistant Secretary.

The argument that Article 24, Section B provides for arbitration of this dispute is without merit since only matters concerning the interpretation or application of the agreement can be arbitrated:

> "In addition, either Party may bring to the other's attention a matter of its concern over the interpretation or application of any provisions of this Agreement."

Article 24, Section H confirms that:

> "The Parties understand and agree that the arbitration of a grievance, issue or disciplinary action appeal will extend only to the interpretation or application of specific provisions in the Agreement."

Issues concerning an interpretation of the Executive Order are not subject to arbitration under the terms of the agreement. I find that the counseling sessions under Article 15, Section J-2 are not "formal discussions" within the meaning of Section 10(e) of the Order. The Assistant Secretary has found that performance interviews and similar counseling sessions between an employee and his supervisor are not formal discussions within the purview of Section 10(e) of the Order since only that employee was affected by the interview and there are no wider ramifications. 1/

I find, therefore, that the matter raised by the applicant is neither grievable nor arbitrable under the negotiated agreement of the parties.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

1/ Social Security Administration, Great Lakes Program Center, Texas Air National Guard, A/SLMR No. 336, and Plattsburg Air Force Base, A/SLMR No. 493.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, not later than the close of business October 24, 1975.

Dated: October 9, 1975

Eugene M. Levine
Acting Assistant Regional Director
for Labor-Management Services

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
2-26-76

653

Mr. James E. O'Neill
Acting Archivist of the United States
National Archives and Records Service
8th & Pennsylvania Avenue, N. W.
Washington, D. C. 20408

Re: National Archives and Records
Service Administration
General Services Administration
Washington, D. C.
Case No. 22-6290(AP)

Dear Mr. O'Neill:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

I find that the instant application is procedurally defective because it was not filed within 60 days after the final written rejection of the grievance was served on the grievant. In this regard, see Section 205.2(b) of the Assistant Secretary's Regulations. (While Section 205.2(b) indicates that an application ". . . must be filed within sixty (60) days after service on the applicant of a written rejection of its grievance . . .," it was noted that this Section of the Regulations would be applicable to the instant situation where the applicant is not the grievant as the intent of this Regulation clearly was to provide a specific time frame for filing an application after the written rejection of a grievance.)

Additionally, in reaching the disposition herein it was noted that, under Article XIII, Section 5(c) of the negotiated agreement, where the Archivist concludes that a grievance is not grievable and/or arbitrable, ". . . the Union shall make no request for arbitration without first obtaining from the Assistant Secretary of Labor for Labor-Management Relations a decision that the matter is appropriate for arbitration." No such decision was sought by the Union and, therefore, its invoking of arbitration in this matter appeared to be inconsistent with the terms of the parties' negotiated agreement.

Under all of these circumstances, I find that dismissal of the instant Application for Decision on Grievability or Arbitrability is warranted based on untimeliness.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NATIONAL ARCHIVES AND RECORDS SERVICE
GENERAL SERVICES ADMINISTRATION

Activity/Applicant

and

Case No. 22-6290(AP)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 2578

Respondent/Labor Organization

REPORT AND FINDINGS
ON
GRIEVABILITY OR ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

On December 26, 1974, the Union filed a grievance alleging, in summary, that management's cancellation of a vacant Supervisory Archivist Branch Chief Position on November 28, 1974, and redefining it as a Supervisory Publications Sales Specialist and transferring it to the excepted service and filling it noncompetitively with someone who had not applied for the original posting violated Article II, Article IV, Section 1(b) and Article XVI, Section 1 of the Agreement because there was no proper cancellation of the initial vacancy; because the Local was not consulted; because the job description changes were not real, because qualified applicants were present; and because such change-overs tend to preselection.

By letter dated April 16, 1975, the Activity took the position that Article II of the Agreement was not grievable, that the matter was not grievable under Article XVI, Section 1, because position description changes are not grievable, however, it agreed that the matter was grievable under Article XVI, Section 2.

An arbitrator was selected to hear the grievance and the hearing was scheduled for July 24, 1975.

Before the arbitration hearing opened, the Activity advised the arbitrator that its position was that the matter was not grievable under the negotiated grievance procedure and that it had filed an Application for Decision on Grievability or Arbitrability with the Assistant Secretary for Labor-Management Relations.

The relevant agreement provisions are as follows:

ARTICLE II: EXECUTIVE ORDER REQUIREMENT

In the administration of all matters covered by this Agreement, Management and the Union are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published GSA procedures and regulations in existence at the time this Agreement is approved; and by subsequently published GSA procedures and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher GSA level.

ARTICLE IV: UNION RIGHTS AND OBLIGATIONS

Section 1, Scope of Representation.

b. Management agrees to consult with the Union on the formulation of general personnel policies and practices and on other matters affecting general working conditions within the discretion of Management, before implementation. Whenever feasible, Management shall give the Union advance notice of one week prior to such meetings, and provide general information as to the subject(s) of the meetings.

ARTICLE XVI: PROMOTIONS

Section 1, Promotion Plan. Management agrees to select employees for promotion in accordance with the GSA Promotion Plan (GSA Handbook, OAD P 3630.1, "Employees Appraisal System and Promotion Plan"), which is freely available to all employees in offices at the branch level and above.

Section 2, Posting of Vacancies.

a. Copies of position vacancy announcements will be posted by Management on bulletin boards in a central location in each NARS-occupied building. Such announcements will be posted at least five full working days prior to their closing date. Copies of such announcements will be available at the Manpower Branch, NARS.

b. Should the Union wish to further publicize vacancy announcements for positions in the Unit, it shall be allowed to make and post a list of such vacancies on bulletin boards in organizational units, subject to procedures approved by the Executive Director, NARS.

ARTICLE XIII: GRIEVANCES

Section 1, Purpose and Coverage. This Article provides a procedure, applicable only to the Unit, for the consideration of grievances over the interpretation or application of this Agreement. This procedure does not cover any other matters, including matters for which statutory appeals procedures exist. It is the exclusive procedure available to Management and the Union and to the employees in the unit for resolving such grievances. Should an employee or group of employees in the unit choose to be represented by or accompanied by a representative, the Union shall have the exclusive right to such representation. However, an employee or group of employees in the Unit may present such grievances to Management and have them adjusted, without the intervention of the Union, as long as the adjustment is not inconsistent with the terms of this Agreement, and the Union has been given an opportunity to be present at the adjustment.

Section 2, Definition. As used in this Article, the term "grievance" is defined as a request, written and submitted in accord with the provisions of this Article, addressed by a member of the Unit, a group of such members, and/or the Union to the level of Management having the authority to grant relief on a matter involving the interpretation or application of this Agreement.

ARTICLE XIV: ARBITRATION

Section 1, Criterion. Grievances not settled by the procedures prescribed in Article XIII may be submitted by the Union for arbitration.

With respect to the issue of whether the matter is grievable under Article II of the Agreement, the Union's position is that alleged violations of the FPM are covered by the Negotiated Grievance Procedure because the language in Article II incorporates the policies set forth in the Federal Personnel Manual into the Agreement by reference. The Activity's position is that the parties never agreed or intended that matters which involve the interpretation of the FPM, published Agency policies or regulations to be subject to the negotiated grievance procedure and that Article II is merely a restatement of Section 12(a) of the Executive Order.

The Union does not even contend that at the time Article II was drafted the parties agreed and intended to make alleged violations of the sources cited in the provision subject to the negotiated Grievance Procedure. It appears that the Union desires to expand the scope of the negotiated grievance procedure to cover these matters and is trying to utilize Article II as a vehicle instead of negotiating the matter.

I find that the matter raised by the grievance is not grievable under Article II of the Agreement. Article II does not deal with or bestow any rights, it simply restates the requirements set forth in Section 12(a) of the Executive Order that are applicable to every agreement between an agency and a labor organization.

With respect to whether the matter is grievable under Article IV, Section 1(b), the Union's position is that in Article IV, Section 1(b) management agrees to consult with the union on the formation of general personnel policies and practices and other matters affecting general working conditions within the discretion of management, before implementation. Management violated this Article because it did not consult with the Union before changing the position from competitive to excepted service.

The Activity's position is that management has the right under Section 11(b) and 12(b) of the Order to cancel one position and to establish another, therefore, the matter is non-grievable. The Activity also argues that the transfer of a position from the competitive to the excepted service does not constitute a change in personnel policies or practices which require consultations.

Article IV, Section 1(b) sets forth management's obligation to consult with the Union; alleged violations of this Article are grievable under the negotiated grievance procedure. I find that the matter involves the application and interpretation of Article IV, Section 1(b) and is grievable and arbitrable.

With respect to whether the matter is grievable under Article XVI, Section 1, both the Activity and the Union agree that alleged violations of Article XVI, Section 1, are grievable. However, the Activity argues that the provisions of the GSA promotion do not apply to the case because the GSA Promotion Plan only covers positions in the competitive service and the appointment in this case was made under the excepted authority. In my view, alleged violations of Article XVI, Section 1, are grievable. I find that the matter, herein, involves the application and interpretation of Article XVI, Section 1, and is grievable and arbitrable.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 12, 1975.

Dated: August 28, 1975

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

2-26-76

Mr. Kenneth T. Blaylock
National Vice-President
Fifth District, American Federation
of Government Employees, AFL-CIO
West Clinton Building, Room 314
2109 Clinton Avenue West
Huntsville, Alabama 35805

654

Re: Supervisor of Shipbuilding,
Conversion and Repair, USN
Department of the Navy
Case No. 42-3056(AP)

Dear Mr. Blaylock:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

In agreement with the Assistant Regional Director, I find that the grievance herein involves the interpretation of the SUPSHIPMAX Merit Promotion Program and of Civil Service Commission Handbook X-118. As the Merit Promotion Program, which incorporates standards prescribed by the Civil Service Commission, involves a regulation or policy of a higher authority and as questions as to the interpretation of such higher authority regulation or policy are specifically excluded from the negotiated grievance and arbitration procedure, I find that the instant grievance is neither grievable nor arbitrable under the terms of the parties' negotiated agreement.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Mayport Naval Station
Department of the Navy
Mayport, Florida

Activity

and

Case No. 42-3056(GA)

Local 2453, American Federation
of Government Employees, AFL-CIO

Applicant

REPORT AND FINDINGS

ON

ARBITRABILITY

Upon an Application for Decision on Arbitrability having been filed pursuant to Section 205 of the Regulations of the Assistant Secretary, an investigation of the matter has been conducted by the Area Director.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

The Application was filed on August 25, 1975 by Local 2453, American Federation of Government Employees, the exclusive representative, hereinafter called the Applicant.1/ The Applicant requests a determination as to the arbitrability of a grievance involving the Activity's alleged failure to comply with the SUPSHIPJAX Merit Promotion Program which was, through negotiation, made a part of the negotiated agreement.

On June 4, 1965 the Applicant was granted exclusive recognition for the following unit:

> All graded and ungraded employees of the office of the Supervisor of Shipbuilding, Conversion and Repair, USN, Jacksonville, including those employees of all Resident Inspection offices under the cognizance of the Employer, except Management officials, Supervisors, Professional employees, employees engaged in personnel work other than purely clerical.

There are approximately sixty-six (66) employees in the unit. A contract effective May 31, 1972 for a three-year period is applicable to the unit.

On February 6, 1975 a grievance was filed alleging violation of Article XXI, Section 1 of the agreement which states:

> The Employer agrees to make promotions and details in accordance with the SUPSHIPJAX Merit Promotion Program.2/

1/ The Application in Item 7 is signed by Louis C. D'Amelio who is the President of Local 2453. Item 6 which requires the name of the agency, activity, labor organization, employee or group of employees filing the application has the entry "N.A." The Application does not reflect that the Applicant is in fact a labor organization which is party to the agreement as required by 205.1(c) of the regulations. Therefore, the Application appears to be improperly filed. However, I am not treating the Application as fatally defective, especially in light of the fact that the Activity has not raised an issue concerning D'Amelio's standing to file the Application.

2/ The SUPSHIPJAX Merit Promotion Program is the program by which all vacancies are filled within the Activity.

The grievance challenged the qualification procedure used to disqualify a classification of employees, namely Ship Surveyors, from competition for a Production Controller, GS-12 position. The grievance requested that the background and experience of the four grievants be considered and that they be found qualified and rated accordingly.

The grievance appeal was rejected by the Activity on February 21, 1975. It asserted that the qualification procedure had been determined in accordance with Civil Service Handbook X-118. On March 6, 1975 representatives of the Activity and the Applicant met to further discuss the issue of the grievance. On March 12, 1975, the Activity submitted the issue to the Office of Civilian Manpower Management (OCMM), Washington, D. C. for an interpretation involving the application of Civil Service Commission standards in the matter raised by the grievance.

On March 20, 1975 the Activity received a request for arbitration.3/ On March 28, 1975, the Activity responded to the request for arbitration and stated that the request should be held in abeyance until receipt of the response from OCMM.

The Director of OCMM replied to the request for interpretation by letter of April 1, 1975 and May 16, 1975, and advised that it would be inappropriate for OCMM to make a determination. The Director advised that OCMM is responsible for policy development and implementation and for regulatory interpretation and guidance and that it could not make qualification determinations on only selected applications under an announcement. OCMM further stated that it is requested to provide advisory opinions on grievances and appeal cases to the Secretarial level and to involve the OCMM in individual ratings at the grievance stage could place them in a compromising position should such cases on appeal reach the Secretarial level.

By letter of June 20, 1975 the Applicant renewed its request for arbitration, and on June 27, 1975, the Activity gave its final decision which was considered by the parties to be the final rejection to arbitrate the issue.

The Activity takes the position that the issue of the qualifications raised by the Applicant involves a final decision of the Commanding Officer with no further recourse available and, at most, the interpretation of higher authority regulations. As such, the Activity contends the issue is not a matter that can be resolved by arbitration. Further, the Activity asserts that absent any other provision in the grievance involving the interpretation or application of the agreement, the Application should be dismissed on the basis that (1) the Commanding Officer has not only complied with the agreement in this matter but exceeded that when he sought interpretation of the OCMM; (2) the Activity complied with the parties' agreement when the Commanding Officer issued his final decision on the matter; (3) there is no remaining unresolved issue involving the interpretation or application of the agreement; and (4) there is no remaining unresolved issue involving the application of policy, law, or regulation in the matter.

In further support of its position, the Activity refers to Article XXXII, Section 2, which states in part:

3/ The request for arbitration was signed by the four grievants, one of which is President of the Applicant labor organization. Article XXXIII of the contract between the Activity and the Applicant provides that only a party to the agreement may request arbitration. However, no issue was raised by the Activity as to the appropriateness of the request for arbitration in its denial of the arbitration request or at anytime thereafter.

> Should an employee or group of employees in the unit, or the parties, initiate a grievance or complaint on matters other than the interpretation or application of the Agreement, such as those involving interpretation or application of agency regulations, regulations or directives of higher authority, or matters for which statutory appeals procedures exist, such grievances or complaints may be presented under applicable procedures and shall not be resolved through the procedures established in this Article or Article XXXIII Arbitration.

The contract clearly provides in Article XXI that promotions will be in accordance with SHPSHIPJAX Merit Promotion Program, the Merit Promotion Program under which all vacancies are filled with the Activity. The Program provides among other things in SUPSHIPJAX Merit Promotion Plan 4, that

> The minimum qualification standards to be used in determining eligibility will be those prescribed by the Civil Service Commission in Handbook X-118. All candidates who meet the appropriate standard will be basically eligible.

Further, Article XXXIII, Section 6, provides

> It is further agreed and understood that arbitration shall not extend to interpretation of the Department of the Navy or higher authority regulations or policy or to changes or proposed changes in Department of the Navy or higher authority regulations or policy and that the arbitrator cannot change, modify, alter, delete or add to the provisions of the Agreement, such right being the prerogative of the contracting parties, the Employer and the Local, only.

I find that the qualifications of the ship surveyors involves an interpretation of the SUPSHIPJAX Merit Promotion Program and further an interpretation of Civil Service Commission Handbook X-118. The SUPSHIPJAX Merit Promotion Program is a regulation or directive of higher authority as defined by Article XXXII, Section 2 and Article XXXIII, Section 6 of the negotiated agreement. Interpretation of the SUPSHIPJAX Merit Promotion Program may not be grieved or arbitrated under the parties' negotiated agreement procedure.

Based on the determination that the grievance involves an interpretation of a regulation or directive of higher authority and the parties' agreement excludes from the arbitration procedure interpretation of regulations of higher authority, I conclude that the matter is not subject to arbitration under an existing agreement.

Pursuant to Section 205.6(b) of the Rules and Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary with a copy served upon this office and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business December 2, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Assistant Regional Director

Atlanta Region

DATED: November 17, 1975

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

2-26-76

Christopher J. Dietzen, Esq. 655
Old National Bank Building
Suite 708
Spokane, Washington 99201

Re: Grand Coulee Project
Bureau of Reclamation
Grand Coulee, Washington
Case No. 71-3476(CA)

Dear Mr. Dietzen:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the pre-complaint charge and the complaint in the subject case were not filed timely pursuant to Section 203.2 of the Assistant Secretary's Regulations and, consequently, further proceedings in this matter are unwarranted.

Accordingly, and noting that matters raised for the first time in a request for review may not be considered by the Assistant Secretary, (see Report on a Ruling No. 46, copy attached) your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

October 14, 1975

Mr. Christopher J. Dietzen
726 Old National Bank Building
Spokane, Washington 99201

Re: Grand Coulee Project -
Garland C. Amundson
Case No. 71-3476

Dear Mr. Dietzen:

The above captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been considered carefully.

It does not appear that further proceedings are warranted inasmuch as the complaint has not been timely filed pursuant to Section 203.2 of the Regulations. In this regard it is alleged that the Complainant's non-selection for an apprenticeship position was due, in significant part, to a derogatory comment related to his union activities and written by his superintendent in his personnel records. Notification of the selections to the apprenticeship program was made on September 6, 1974, while the instant charge and complaint were not filed until April 11, 1975, and July 11, 1975, respectively. Complainant's contention that the complaint is timely because the non-selection and the derogatory comment constitute continuing violations is found to be without merit since these are single, isolated and completed occurrances. Since you have submitted no evidence that further instances of discrimination occurred that would make this complaint timely, I find that the charge and the complaint were untimely filed.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20210, not later than the Close of Business on October 28, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

2-26-76

Mr. Edwin L. Kess
Labor Relations Officer
Social and Rehabilitation Service
Department of Health, Education and
Welfare
Washington, D. C. 20201

656

Re: Social and Rehabilitation Service
Department of Health, Education
and Welfare
Case No. 22-6301(AP)

Dear Mr. Kess:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, in the above-named case.

In agreement with the Assistant Regional Director, I find that the grievance herein involves a matter concerning the interpretation and application of the negotiated agreement and is, therefore, subject to the grievance and arbitration procedures contained therein. In your request for review, you contend that the parties did not intend that disputes under the merit promotion provision of the agreement were to be subject to the negotiated grievance procedure when at issue was a position allegedly outside the bargaining unit. I find no evidence to support this position. In fact, there is undisputed evidence of prior grievance and arbitration proceedings under the same negotiated procedure participated in by the Activity involving issues similar to those involved herein and no contention was made in those proceedings that the grievances involved were not subject to the negotiated grievance and arbitration procedures.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Relations, Labor-Management Services Administration, U. S. Department of Labor, in writing,

within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 14120, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HEALTH, EDUCATION AND
WELFARE
SOCIAL AND REHABILITATION SERVICE

Activity/Applicant

and

Case No. 22-6301(AP)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO
LOCAL 41

Labor Organization

REPORT AND FINDINGS
ON
GRIEVABILITY OR ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

On or about January 17, 1975, an employee of the Activity, Thomas W. Dennison, filed a grievance over an alleged violation of Article 12 of the SRS/Local 41 contract. Specifically, the grievance related to the nature of the filling of the position of Computer Systems Analyst, GS-334-14, SRS Announcement AN73-83.

On February 21, 1975, the Activity replied to Dennison informing him that the grievance could not be accepted under the negotiated grievance procedure inasmuch as the position involved was outside of the bargaining unit. The Activity contended that the Department of Health, Education and Welfare (DHEW) grievance procedure was the appropriate avenue for the grievance. On July 2, 1975, the Activity issued a final rejection of Dennison's grievance. Following this, the instant application was filed by the Activity on August 5, 1975, requesting that the Assistant Secretary find whether or not the grievance was on a matter subject to the grievance procedure provided for in Article 18 of the General Agreement between the Parties.

The relevant portions of the contract are Articles 12, 18 and 19. (Article 1 had also been cited; however, since this Article addresses the composition of the unit, I find that the appropriate vehicle for a resolution of a question related to it is a Clarification of Unit Petition). The relevant portions are quoted, in part, hereafter:

ARTICLE 12 - Merit Promotion

Section A. The Parties agree that under the Merit System the promotion of employees, as well as their initial selection is required to be made on the basis of merit. A sound promotion program is essential to assure that an agency is staffed by the best qualified candidates available and to assure that employees have an opportunity to develop and advance to their full potential according to their capabilities. To this end the SRS Merit Promotion Plan developed in consultation with the Union is designed:

1. to bring to the attention of management on a timely basis highly qualified candidates from whom to choose;

2. to give employees an opportunity to receive fair and appropriate consideration for higher level jobs;

3. to assure the maximum utilization of employees;

4. to provide an incentive for employees to improve their performance and develop their skills, knowledge and abilities; and

5. to provide attractive career opportunities for employees.

The Employer agrees therefore to promote employees in a fair and equitable manner without pre-selection in accordance with its Merit Promotion Plan transmitted on September 29, 1972.

Section C. It is important to both Parties that every effort be taken to maintain and improve employee understanding of promotion policies and procedures. In this connection, the Employer agrees to provide a monthly listing of all promotions and new hires including the location, title, code, grade and name of the individual hired and/or promoted. Additionally, the Parties agree that the Union may designate a qualified member to serve on the Qualifications Review Boards. Such member must be familiar with the same or related functional area of the position to be filled.

Section D. The Employer will consider concurrently outside candidates only if a determination has been made that there are not enough highly qualified SRS candidates. If an outside candidate is selected, the selecting official must demonstrate in writing that the outside candidate is clearly better qualified than SRS employees.

Section F. In order to reduce employee dissatisfaction with the promotion system and to build employee confidence in its operation, it is essential that the Union be involved in promotion actions to the extent that it may reassure all employees that they have received fair and impartial consideration. Not only will the Union's presence allow employees to place more assurance in the promotion plan, but it should limit the number of formal, protracted inquiries required by the filing of formal grievance and equal employment complaints. With the foregoing in mind, the Parties agree that when designated by an employee, the President of the Union or his designee will be permitted to post audit the records used as a basis for screening and ranking the employee. Such records are: the promotion certificate; record of awards received; training, experience and education records; the position description, selective qualification requirements, CSC qualification requirements, record of consideration, and the selecting official's statement of his reasons for making the selection.

Section G. Disputes arising out of the application of the promotion plan shall be processed in accordance with the established grievance procedures. Allegations of failure to be selected for promotion when proper promotion procedures were used (that is, non-selection from among a group of properly ranked and certified candidates) is not a basis for a formal complaint.

ARTICLE 18 - Procedures for the Adjustment of Grievances

Section A. Purpose - It is recognized that complaints and grievances may arise between the Parties or between the Employer and any one or more employees concerning the application or interpretation of, the provisions contained in this Agreement.

The Parties earnestly desire that these grievances and complaints be settled in an orderly, prompt, and equitable manner so that the efficiency of the Social and Rehabilitation Service may be maintained and the morale of employees not be impaired. Every effort will be made by the Parties to settle grievances at the lowest level of supervision. The initiation or presentation of a grievance by an employee will not cause any reflection on his standing with or his loyalty to the Employer.

Section B. Definitions - For the purpose of this Agreement, a grievance is defined as a request for relief in a matter of concern arising over the interpretation or application of this Agreement. A grievance must be initiated by employee(s) covered by this Agreement and/or their Union representatives. This procedure shall be the exclusive procedure to be utilized in adjusting such grievances and the Union shall be the only employee representative who may use this procedure, unless another representative is approved in writing by the Union.

Section C. Exclusions - Complaints, appeals, and grievances on the following matters are excluded from the scope of this procedure.

1. Matters which are subject to final administrative review outside the Social and Rehabilitation Service, under law or regulation of the Civil Service Commission, or where statutory appeal procedures exist.

2. Issues requiring the interpretation of published DHEW and Civil Service Commission policies or those issued by appropriate authorities which are not within the administrative discretion of the Administrator of the Social and Rehabilitation Service.

3. Nonselection for promotion, reassignment, or detail from a group of properly ranked and certified candidates.

4. All preliminary warnings or notices or actions which, if effected, would become a grievance or would be excluded from this procedure by one or more exclusions in this Section.

5. Termination of probationary employees and grievances filed by employees not in the bargaining unit.

6. A grievance that is in process or has been processed or decided under the DHEW Grievance Procedure, or an unfair labor practice complaint filed under Section 19(d) of Executive Order 11491, as amended, arising out of the same set of facts on which a grievance may be filed under this procedure.

7. An action terminating a temporary promotion within a maximum period of 2 years and returning the employee to the position from which he was temporarily promoted or reassigning or demoting him to a different position that is not at a lower grade or level than the position from which he was temporarily promoted.

8. Nonadoption of suggestions; disapprovals of quality salary increases, performance awards, or other kinds of honorary or discretionary awards.

ARTICLE 19 - Arbitration

Section A. Arbitration will be used to settle unsolved grievances processed under the negotiated grievance procedure. Either of the Parties to the Agreement may request that arbitration be invoked. The use of arbitration shall be limited to grievances arising from the interpretation or application of the provisions of this Agreement.

Section B. In addition, either Party may bring to the other's attention a matter of its concerns over the interpretation or application of any provisions of this Agreement. These issues on the interpretation and application of the Agreement, before being submitted to arbitration, shall be discussed informally between the President and/or the Vice President/SRS of the Union and the Director of Personnel. Every reasonable effort shall be made to resolve the issue. If the issue is not resolved, it may be submitted to arbitration.

The Activity's position is that the grievance involves a position outside the bargaining unit and, therefore, a grievance relating to the filling of it is not covered by the negotiated grievance procedure. The Activity contends that the parties to the contract never intended for actions relating to such positions to be covered under the negotiated grievance procedure. The Activity avers that it has consistently maintained the policy that employee grievance arising from the implementation of the provisions of Article 12 and the SRS Merit Promotion Plan involving positions outside the unit should be processed under the Departmental grievance procedure. Furthermore, the Activity points to Article 12, Section G, and contends that the phrase "established grievance procedures" recognizes the availability of the DHEW grievance procedure for bargaining unit employee grievance relating to non-unit positions.

The Union in addition to disagreeing that the position involved is outside the unit contends that denying bargaining unit employees access to the negotiated grievance procedure for grievances relating to non-unit positions negates the purposes of the Merit Promotion Plan as cited in Article 12, Section A of the contract between the parties. The Union asserts that it was never the intent of the parties to restrict the coverage of Article 18 to grievances over unit positions and contends that a past practice of permitting grievances over non-unit positions under the negotiated grievance procedure exists.

I find that the issue placed before me, i.e., whether a unit employee may grieve under the negotiated procedure a promotion action relating to an alleged non-unit position[1/] is a matter relating to the interpretation of Articles 12, 18 and 19 of the agreement between the parties and is, therefore, grievable and arbitrable.

1/ I am not ruling on the correctness of the designation of the position involved as that of a management official in the findings herein.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, not later than the close of business November 13, 1975.

Dated: October 29, 1975

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

2-26-76

James E. Dumerer, Captain, USAF
Labor Relations Counsel
Office of the Staff Judge Advocate
Sacramento ALC/JA
McClellan AFB, California

657

Re: Department of the Air Force,
Headquarters
Sacramento Air Logistics Center (AFLC)
Case Nos. 70-4610, 4614, 4615, 4616,
4617, 2624, 2625, 2626,
4627, 4658, 4659, 4660,
4661, 4663, 4664, 4665,
4666, 4667, and 4680

Dear Captain Dumerer:

I have considered carefully the request for review seeking reversal of the Assistant Regional Director's Report and Findings on Application for Decision on Grievability or Arbitrability, in the above captioned case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the instant grievances, which raise the question whether the Activity violated Article XXIV, Section 1 of the parties' negotiated agreement when it required the grievants to use annual leave during a holiday period, is on a matter which is subject to the negotiated grievance and arbitration procedure. Moreover, in my view, those grievances which were filed within 15 days of the "occurrence of the incident alleged to be a violation of the agreement," —i.e. the placing of employees on annual leave during the holiday period - were filed timely within the meaning of Article XVI, Section 4 of the negotiated agreement.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Application for Decision on Grievability or Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Services, U. S. Department of

Labor in writing, 30 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is, Room 9061, Federal Office Building, 450 Golden Gate Avenue, San Francisco, California 94102.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

DEPARTMENT OF THE AIR FORCE HEADQUARTERS SACRAMENTO AIR LOGISTICS CENTER (AFLC) -ACTIVITY -AND- AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1857, AFL-CIO -APPLICANT	CASE NOS. 70-4610, 4614, 4615, 4616, 4617, 4624, 4625, 4626, 4627, 4658, 4659, 4660, 4661, 4663, 4664, 4665, 4666, 4667, 4680

REPORT AND FINDINGS

ON

APPLICATION FOR DECISION ON GRIEVABILITY OR ARBITRABILITY

The American Federation of Government Employees, AFL-CIO, Local 1857, herein called the Applicant, filed 19 applications under Section 205 of the Rules and Regulations of the Assistant Secretary requesting a decision as to whether certain grievances are on a matter subject to the grievance and arbitration procedures in an existing agreement.[1/] The undersigned has caused an investigation of the facts to be made and finds as follows:

The Applicant is the exclusive representative of three collective bargaining units of employees at McClellan Air Force Base, herein called the Activity, consisting of all non-supervisory class act employees, all non-supervisory wage board employees, and non-supervisory employees in the Reproduction Branch.

From each of these units are excluded management officials, supervisors, guards, employees engaged in civilian personnel work other than those in a purely clerical capacity, professional employees, temporary employees holding appointments for one year or less, and employees in other specified bargaining units. The parties executed one collective bargaining agreement on December 11, 1972, covering the employees in all three units, which was in effect at the time the grievances were filed.

1/ A total of 397 grievances were filed by individual employees and the Applicant concerning the same set of circumstances and alleging the same violations of the negotiated agreement. Since the issues raised by the 19 applications are the same for each case, these cases are consolidated for the purposes of this Report and Findings.

McClellan Air Force Base is a subordinate base of the Air Force Logistics Command (AFLC), which is headquartered at Wright-Patterson Air Force Base, Ohio. The facts, which are not in dispute, indicate that on February 16, 1974, AFLC informed the Activity that AFLC activities would operate under a minimum workload schedule from December 21, 1974, through January 1, 1975. Subsequently, the Activity notified the Applicant of the planned workload curtailment which would necessitate many employees taking six days of annual leave during this period. In a letter dated April 2, 1974, the Applicant expressed concern over the impact this plan might have on employees with limited seniority and urged that the Activity's former policy of liberally granting leave during the holiday season by operating with a definitely contracted workload be followed again. Thereafter the Activity formulated its plans to reduce operations, issuing instructions on implementation of the plans to its supervisors and reminding employees to save six days of annual leave. During the week of December 16, 1975, the Activity notified the employees who were to be scheduled for annual leave during the holiday period.

Upon returning to work after the holidays, certain of the employees and the Applicant filed grievances over the employees' having been required to take annual leave when they had not requested it. The grievances allege a violation of Article XXIV Section 1 of the negotiated agreement, which provides:

> It is mutually agreed that annual leave is a right of the employee. However, the determination as to the time and amount of annual leave granted at any specific time is the responsibility of the employee's immediate supervisor.

Article XVI of the agreement contains the grievance and arbitration procedures. Section 4, Step 1 provides, in pertinent part:

> A grievance, to be pursued under this negotiated procedure, must be presented to an employee's immediate supervisor or to the lowest level of supervision having authority to grant the remedy being requested. The presentation may be oral and must be presented by an employee or the Union within 15 work days after receipt of the notice of the action, or occurrence of the incident alleged to be in violation of this agreement . . .

All grievances were filed at the Commander level because it was considered the lowest level of management with authority to grant the requested remedy. Each grievance was rejected by the Activity on the grounds that they were untimely filed because the employees and the Applicant had been "notified" of the proposed Holiday Curtailment Program as early as February and March of 1974,; and because there was no violation of the negotiated agreement or of any regulation.

With respect to the timeliness issue raised by the Activity's rejection, the Applicant asserts that the Activity's policy as to which individuals would be required to take leave was not finalized until mid-December and that the particular employees who were actually required to take leave were not notified until the week preceding the holiday leave period. Thus, the Applicant argues that "notice of the action" within the meaning

of Article XVI, Section 4 did not occur until the week of December 16, 1974. Moreover, the Applicant contends that Article XVI, Section 4 explicitly provides for the filing of a grievance within 15 days from the "occurrence of the incident alleged to be in violation of this agreement," and that the incident being grieved occurred at the time the employees were not allowed to work.

The Activity contends that its intent in proposing during negotiations the adoption of Article XVI, Section 4, as eventually incorporated by agreement of the parties, was to establish that the grievance filing period for an alleged contract violation can begin to run either from the occurrence of an incident or the notice of the action, whichever first affords the employee an opportunity to learn of management's action or inaction. Applying this rationale to the instant case, the Activity asserts that the computation period for defining the timeliness of the grievances commences as of its February, 1974 , notice of the action to be taken during the holiday curtailment period.

The Applicant, while in apparent agreement with respect to the general intent of Article XVI, Section 4, argues that a notice of an action to be taken at some future date as was given by the Activity, is to be distinguished from notice given that an action has been taken, which it asserts is the meaning to be given this provision of the agreement.

It is the view of the undersigned that it is not necessary to reconcile the differing interpretations given by the parties to Article XVI, Section 4 of the negotiated agreement since the action being grieved is the selection and requirement of certain employees for forced leave-taking, rather than an announcement by the Activity that such selection would in futura be made. In this regard, it is noted that all employees were not to be adversely affected by this announced policy and, therefore, there was no basis for the filing of the grievances herein until the selection of employees was made. In these circumstances, and since the grievances were filed within 15 days of the notice of action (i.e., identification of employees selected for forced annual leave-taking), I find that the grievances were timely filed. 2/

The Activity, additionally, contends that the grievance should be found non-grievable nor arbitrable because no violation of the agreement occurred and because there is regulatory support for the action which was taken.

2/ It is noted that the grievance of employee Wilfred Ortez (Case No. 70-4680) was filed on January 24, 1975, which was more than 15 work days from the end of the forced leave period. However, the Activity's rejection of this grievance was based solely on the same grounds as those given in all the other grievances, and the Activity did not raise this issue in its position filed with the Department of Labor as an additional basis for finding the grievance untimely filed. As a general proposition, parties are expected to comply with the technical requirements of the grievance procedure. How Arbitration Works, Third Edition, Elkouri and Elkouri, p. 114. Since the Activity did not reject the grievance on the basis of its having been filed more than 15 work days from the end of the forced leave period, I find that the Activity is estopped from now raising this issue and the grievance must be accpeted as timely.

Specifically, the Activity asserts that Article XXIV, Section 1, supra reserves to management the determination as to when an employee will use annual leave. The Activity also cites Air Force Regulation 40-630, dated September 27, 1971, and Federal Personnel Manual Chapter 630, Subchapter 3, paragraph 3-4(b)1 as further grounds that management retains control over the period of time in which an employee can use accumulated annual leave.

It is the opinion of the undersigned that these arguments advanced by the Activity as to its authority to require employees to take annual leave go to the substance of the issues in the grievances and that these issues are more appropriately resolved by an arbitrator, providing the grievances are determined to be arbitrable.

However, this is not to say the negotiated agreement is to be viewed in vacuo; rather, consideration must be given to relevant statutory provisions, the Order, and regulations. Department of the Navy, Naval Ammunition Depot, Crane, Indiana, FLRC eb. 74A-19. In this regard, there is no contention nor does it appear that the parties are foreclosed by statutory or regulatory requirements or by the Order from including in a negotiated agreement matters relating to annual leave. Moreover, the Activity does not allege, nor does it appear, that the negotiated provisions are contrary to existing regulations.

In these circumstances, the undersigned concludes that the grievances are on matters properly covered by the agreement and, accordingly, are subject to the negotiated grievance and arbitration procedures. 3/

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, a party may a review of these findings by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. A copy of the request must be served on this office and the other party. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on July 29, 1975.

Labor-Management Services Administration

Dated: July 16, 1975

Gordon M. Byrholdt, Assistant Regional Director, San Francisco Region, USDOL
450 Golden Gate Avenue, Room 9061
San Francisco, California 94102

3/ Although not raised by the Activity, I note that Article XVI, Section 2a of the agreement provides that "questions involving the interpretation of published agency reulations . . .or regulations of appropriate authorities outside the agency shall not be subject to the negotiated grievance procedure . . ." However, I find there are no restrictions in this section on questions involving the application of such regulations nor to the consideration of such regulations during the processing of grievances which do not call for their interpretation. The grievances here are not concerned with the manner in which the Activity determined the meaning of the regulations governing leave, but instead question the manner in which the Activity applied them. Therefore, it is concluded that this subsection of the agreement does not preclude processing the grievances under the negotiated grievance procedure.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

2-26-76

658

Ms. Janet Cooper
Legal Department
National Federation of Federal Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: Department of Transportation,
U. S. Coast Guard
Washington, D. C.
Case No. 22-6296(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Thus, in my view, the Complainant did not present sufficient evidence to establish a reasonable basis for the allegation that the Respondent had exceeded its Section 15 approval authority or that the exercise of such authority was in bad faith.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's decision in the instant case, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

September 12, 1975

Ms. Janet Cooper
Staff Attorney
National Federation of Federal Employees
1737 H Street, NW
Washington, D.C. 20006
(Cert. Mail No. 701848)

Re: U. S. Coast Guard
Case No. 22-6296(CA)

Dear Ms. Cooper:

The above-captioned case alleging a violation of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You allege that the Respondent violated Sections 19(a)(1) and (6) of the Order when, on February 24, 1975, it disapproved Article III, Sections 1(6) and 2; Article XIV, Section 2; and Article XX, Section 2 of the Agreement between the U. S. Coast Guard Base, Miami Beach and NFFE, Local 1485. You contend that the Respondent exceeded the scope of the review authority of Section 15 of the Order and was attempting to rewirte the contract in accordance with its own views.

The investigation has established that the NFFE, Local 1485, and the U. S. Coast Guard Base, Miami Beach, negotiated and signed an Agreement and submitted it to the Commandant, U. S. Coast Guard, which has been delegated Section 15 review authority by the Secretary of Transportation, for approval on November 11, 1974.

By letter dated February 24, 1975, the Respondent advised that it was disapproving Article III, Sections 1(6) and 2 because the use of the term "The Director of the Agency" was inconsistent with the definition of Agency set forth in Section 2 of the Order; it was disapproving Article XIV, Section 2 because it would be a violation of Sections 19(a) and 20 of the Order to afford representatives of the union official time to orientate new employees to the purposes, goals and achievements of the union; and that it was disapproving Article XX, Section 2 because it was not in conformity with Section 13(a) of the Order which requires that the negotiated procedures must be the exclusive procedure not just the "sole negotiated" procedure for resolving grievances.

You contend that the Respondent is attempting to rewrite the Agreement in accordance with its own views, however, the evidence presented reveals that the Respondent refused to approve the provisions in dispute because they were not in conformity with the Order.

It is clear from precedent decisions that, under Section 15 of the Order, an Agency has the authority to disapprove a provision of an agreement if it is not in conformity with the Executive Order.1/ Respondent's actions are within the scope of Section 15 review authority. There is no evidence that the Agency's invocation and use of the authority granted by Section 15 was in bad faith or that the reasons it cited for disapproving the portions of the proposed contract were ambigious.

Moreover, if a union disagrees with an Agency's determination under Section 15, the proper avenue of appeal is to the Federal Labor Relations Council under the procedures set forth in 11(c) of the Order. The issue may not be raised under the unfair labor practice complaint procedure of the Order.

In any event, further proceedings with regard to the Section 19(a)(6) allegation against the U. S. Coast Guard are unwarranted. The objection to meet and confer under Section 11 of the Order applies only in the context of the exclusive bargaining relationship between the exclusive representative and the Activity or Agency which has accorded exclusive recognition. In this regard, I note that the U. S. Coast Guard Base, Miami Beach, is a party to the proposed contract and not the U. S. Coast Guard.

You have not established a reasonable basis that a 19(a)(1) or (6) violation has occurred.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 208.(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

1/ Local 174, American Federation of Technical Engineers, AFL-CIO, and Subships, USN, 11th Naval District, San Diego, California, FLRC No. 71A-49 (June 29, 1973) and United States Department of Agriculture and Agriculture Research Service, A/SLMR No. 519.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business September 29, 1975.

Sincerely,

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

cc: Rear Admiral R. W. Durfey
Chief, Office of Personnel
U. S. Coast Guard (G-PC-1/62)
400 Seventh Street, SW
Washington, D.C. 20590
(Cert. Mail No. 701849)

bcc: S. Jesse Reuben, OFLMR
Dow Walker, AD/WAO

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
2-27-76

659

Ms. Marie C. Brogan
President, National Federation of
Federal Employees, Local 1001
P. O. Box 1935
Vandenberg Air Force Base, California 93437

Re: Department of the Air Force
Vandenberg Air Force Base
Vandenberg, California
Case No. 72-5415(CA)

Dear Ms. Brogan:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case. In agreement with the Assistant Regional Director, I find that the instant complaint was not filed timely in accordance with Section 203.2(b)(3) of the Regulations.

In your request for review, you suggest that the dismissal is based on "the wrong assumption that the act complained about occurred in August 1974." You base your argument on the fact that your complaint would have been timely as regards an event which occurred on October 17, 1974. I find, however, that the gravamen of the alleged unfair labor practice herein concerns an event which occurred in August 1974 and that, therefore, for timeliness purposes that date is determinative. Under these circumstances, I agree with the Assistant Regional Director's conclusion that the instant complaint is untimely.

Accordingly, your request for review seeking reversal of the Assistant Regional Director's findings, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

September 23, 1975

Ms. Marie C. Brogan
President, National Federation of
Federal Employees, Local 1001
P. O. Box 1935
Vandenberg AFB, CA 93437

Re: Vandenberg AFB, SAMTEC -
NFFE, Local 1001
Case No. 72-5415

Dear Ms. Brogan:

The above captioned case alleging a violation of Executive Order 11491, as amended, has been considered carefully.

It does not appear that further proceedings are warranted inasmuch as the complaint was not filed timely in accordance with Section 203.2(b)(3) of the regulations of the Assistant Secretary. In this regard, I noted that the admitted unilateral action by the Activity occurred in August, 1974, a date in excess of nine months prior to the July 14, 1975, filing date of the instant complaint.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than the close of business on October 8, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

2-27-76

660

Mr. Richard E. Fitzgerald
7823 East 4th Street
Tulsa, Oklahoma 74112

Re: National Federation of Federal
Employees, Local 116
(Bureau of Indian Affairs)
Wyandotte, Oklahoma
Case No. 63-5996(CO)

Dear Mr. Fitzgerald:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted in that the instant complaint was not timely filed.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

November 7, 1975

In reply refer to: 63-5996(CO)
NFFE Local Union 116, Ind./
Richard E. Fitzgerald

Mr. Richard E. Fitzgerald
7823 East 4th Street
Tulsa, Oklahoma 74112

Certified Mail #201840

Dear Mr. Fitzgerald:

The above-captioned case alleging a violation of Section 19(b)(1) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as the complaint has not been timely filed pursuant to Section 203.2 of the Regulations in that the memorandum identified by you as the letter of charges is dated July 12, 1974. Your complaint in this matter is dated July 18, 1975, and therefore does not meet the timeliness requirements of the above-cited section of the Regulations.

Additionally, the memorandum dated July 12, 1974, identified by you as the letter of charges does not meet the requirements of Section 203.2 of the Regulations of the Assistant Secretary in that the memorandum does not contain a clear and concise statement of the facts constituting the unfair labor practice. The above memorandum appears to pertain to a Grievance Reconsideration pertaining to employee Glen Wheeler.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such a request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Labor-Management Relations, Washington, D. C. 20210, not later than close of business November 24, 1975.

Sincerely yours,

CULLEN P. KEOUGH
Assistant Regional Director
for Labor Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
2-27-76

661

Mr. William F. Crowell
Attorney-at-Law
Room 501
610 Sixteenth Street
Oakland, California 94612

Re: Navy Exchange
U. S. Naval Air Station
Alameda, California
Case No. 70-4979(GA)

Dear Mr. Crowell:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability in the above-named case.

I find, in agreement with the Assistant Regional Director, that the instant Application, involving a grievance concerning a reduction in hours worked by certain employees of the Activity, has been rendered moot by the Activity's agreement to arbitrate the matter. In my view, the issue concerning the arbitrability of the instant grievance was rendered moot when the Activity agreed to submit the matter to advisory arbitration pursuant to the terms of the parties' negotiated agreement. In reaching this conclusion, I find that your contention that the Activity has not agreed to arbitrate the grievance is not supported by the evidence adduced during the investigation. Thus, in my view, the only remaining issue, concerning which employees are covered by the grievance, involves the scope of any potential remedy herein and, consequently, is a matter for decision by the arbitrator rather than by the Assistant Secretary.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Arbitrability, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

DEPARTMENT OF THE NAVY NAVY EXCHANGE ALAMEDA NAVAL AIR STATION -ACTIVITY -AND- LAUNDRY, DRY-CLEANING AND GOVERNMENT SERVICES UNION LOCAL 3, AFL-CIO -APPLICANT	CASE NO. 70-4979

REPORT AND FINDINGS

ON

ARBITRABILITY

Under an application for decision on arbitrability duly filed under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of the matter has been conducted by the Area Director.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

On August 19, 1975, the Laundry, Dry-cleaning, and Government Services Union, Local 3, AFL-CIO (herein called the Applicant) filed an application for decision on arbitrability of a grievance filed under the negotiated grievance and arbitration procedures of an existing negotiated agreement. The grievance concerned the reduction of hours of permanent full-time employees in department H-8 of the Navy Exchange, U. S. Naval Air Station, Alameda. California, herein called the Activity.

The Applicant is the exclusive representative of all non-appropriated fund employees of the Navy Exchange, Naval Air Station, Alameda; excluding professional employees, employees of the Enlisted Men's Club, supervisors, management officials, guards, confidential employees and employees engaged in personnel work in other than a purely clerical capacity. The Applicant and Activity are parties to a current negotiated agreement signed on February 25, 1975, which became effective July 1, 1975. The previous agreement between the parties was effective from November 2, 1973 to July 1, 1975.

On July 8, 1975, the Applicant filed a grievance concerning the reduction by the Activity of the hours of permanent employees. The grievance was limited to permanent employees of the H-8 Department of the Navy Exchange, Naval Air Station, Alameda. On July 22, 1975, the Activity, while asserting that the reduction was a management prerogative, informed the Applicant that these employees would be restored to a 40-hour work week tentatively effective August 27, 1975.

On July 28, 1975, the Applicant requested that Advisory Arbitration be held on the matter pursuant to Article XIX of the negotiated agreement. The Activity on August 8 1975, rejected the request for arbitration on the grounds the reduction in hours was not an arbitrable issue since it was a right reserved to Management. Subsequently, the Applicant timely filed the instant application.

In its initial response to the Application, the Activity reiterated its original position that the grievance was not arbitrable but, on September 26, 1975, the Activity agreed to consider advisory arbitration. During this period, a 40 hour work week was restored to H-8 department personnel, but a reduction in hours was instituted in other Navy Exchange units represented by the Applicant.

In October 1975, the parties met to discuss a settlement of the situation but could not reach agreement. At that time, the Applicant contended that the instant grievance applied to all departments at the Alameda Naval Air Station as well as other units of the Navy Exchange represented by the Applicant at Oak Knoll Hospital Navy Exchange, Treasure Island Navy Exchange, Concord Weapons Depot Navy Exchange and the Naval Air Station, Alameda Warehouse Navy Exchange. The Applicant, noting that the hours of the H-8 department employees had been restored, would not agree to arbitrate that limited issue since employees in the other units represented by it were experiencing a similar reduction in hours. As a consequence, the Applicant seeks to arbitrate the reductions in hours of all affected employees.

The Activity agreed to arbitrate the issue of reduction in hours limited to what it considered the scope of the grievance; i.e.: H-8 department employees at the Naval Air Station Navy Exchange, Alameda.

At this juncture, the Applicant requested the Assistant Secretary to decide the issue of arbitrability as it applied generally to the issue of hours reduction of all employees of the above units, each of which has a separate negotiated agreement.

The Activity contends there is no longer a question of grievability or arbitrability within the meaning of the Order. The Activity asserts that any remaining differences between the parties should be handled as provided for in their negotiated agreement since the arbitrability of the reduction in hours has been agreed to by both parties and it is only the scope of the grievance as to which employees should be covered that is in question.

The negotiated agreement covering the non-appropriated fund employees of the Navy Exchange, Naval Air Station, Alameda provides in pertinent part:

Article IX

Hours of Work

> Section 1. The basic work week for full time employees will normally be forty (40) hours, exclusive of meal times. This basic work week normally will be divided into five 8-hour days, exclusive of meal times.

Article XVIII

Grievance Procedure

Section 1. This article is intended to provide an orderly and sole procedure for the processing of grievance (sic) of the parties and unit employees . . . Grievances, to be processed under this article, shall pertain only to the interpretation or application of express provisions of this agreement . . .

Article XIX

Advisory Arbitration

Section 2 . . .(T)he Parties . . . shall meet for the purpose of endeavoring to agree on the selection of an arbitrator and to draw up an Agreement to arbitrate (sic). The Agreement to Arbitrate shall contain a statement of the specific section of this negotiated contract to which the arbitration process shall refer, together with a brief statement of the issues involved and each Party's position in respect to these disputed issues. It is understood that the Arbitrator shall render an award limited to the specific issues as presented by the Agreement to Arbitrate, and shall not have the authority to change or modify this negotiated Agreement . . .

Section 3. If the Parties cannot agree on which section of this negotiated Agreement is to be referenced in the Agreement to Arbitrate, then each Party shall state the section it thinks appropriate, together with its reasons for so thinking and the Aribitrator, shall decide during the course of the arbitration proceedings which section is appropriate or applicable . . .

The undersigned notes that the grievance, as filed, alleges a violation of Article IX, Section 1 of the negotiated agreement on behalf of employees in Department H-8. Following extended negotiations, the Activity agreed to arbitrate the issues raised in the grievance with respect to the Department H-8 employees. However, the Activity has rejected Applicant's present contention, which was articulated subsequent to the filing of this Application, that the arbitrator should decide not only the issues raised in the instant grievance but, also, similar issues affecting employees working in other units covered by separate negotiated agreements.

As the undersigned views the negotiated agreement, the Parties have agreed in Article XIX, Section 2 that if they are unable to agree on a joint submission of the issues to be placed before the arbitrator, as has occurred in the instant situation, the arbitrator shall determine the issue or issues to be heard. Notwithstanding the acquiese of the Activity in arbitrating the issues as framed in the grievance as originally filed, the Applicant does not look to the provisions of Article XIX, Section 2 to resolve their differing views as to the scope of the grievance but, rather, requests the Assistant Secretary to make this determination.

It is the opinion of the undersigned that such request by the Applicant is inappropriate since there is no agreement by the Parties, as contemplated in Section 13(d) of the Order, that this question be decided by the Assistant Secretary.

In view of the foregoing, I find that the application for a decision on the arbitrability of the instant grievance has been rendered moot since the Activity has agreed to arbitrate the grievance.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggriev party may obtain a review of this action by filing a request for review with the Assis ant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Mana ment Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. A copy of the request for review must be served on the undersigned Region Administrator as well as the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business December 26, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATIC

GORDON M. EYRHOLDT
Regional Administrator
Labor-Management Services Administratio
San Franciso Region
9061 Federal Office Building
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: December 10, 1975

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

2-27-76

662

Mr. George Tilton
Associate General Counsel
National Federation of Federal
Employees
1010 16th Street, N. W.
Washington, D. C. 20036

Re: Massachusetts Army National
Guard
Boston, Massachusetts
Case No. 31-9178(CA)

Dear Mr. Tilton:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, in my view, the evidence does not establish that the February 11, 1975, "counselling session" involved herein was a "formal discussion" concerning grievances, personnel policies and practices, or matters affecting general working conditions within the meaning of Section 10(e) of the Order. Rather, the discussion was related to an individual employee's alleged shortcomings in his job performance and had no wider ramifications other than the particular incident involving that employee. Cf. Department of Defense, National Guard Bureau, Texas Air National Guard, A/SLMR No. 336. Moreover, it was noted that the employee involved did not request representation during the subject discussion.

I find also, under the particular circumstances herein, that Gorski's alleged statements that the Complainant had no right to participate in the subject "counselling session," or in subsequent steps concerning the matter, were not violative of the Order. Thus, notwithstanding his alleged statements, the evidence establishes that Gorski subsequently discussed the matter fully with the Complainant's representative.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

October 24, 1975 In Reply Refer to Case No. 31-9178(CA)

Paul C. McNaught, President
Local 1629
National Federation of Federal Employees
50 Campbell Street
Woburn, Massachusetts 01801

Re: Massachusetts Army National Guard

Dear Mr. McNaught:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are necessary inasmuch as you have failed to establish a reasonable basis for the complaint.

The complaint alleges, in substance, that Respondent violated Sections 19(a)(1) and (6) of the Order by virtue of the following actions of its supervisor on two separate occasions:

A. On February 11, 1975, an employee was given a "notice of contemplated adverse action" without being advised of his right to union representation.
B. On February 25, 1975, when Complainant's shop steward met with Respondent's supervisor to discuss the above letter, Respondent's supervisor told the shop steward that the union had no right to be involved in meetings like the one held on February 11, 1975 and he did not see where the union had any right to be involved at later steps.

Respondent contends that the meeting held on February 11, 1975 was nothing more than a counselling session and thus, the aggrieved employee was not entitled to union representation. Respondent denies that remarks allegedly made to the shop steward on February 25, 1975 were violative of the Order.

There is no dispute that the aggrieved employee did not request union representation prior to or at anytime during the meeting held on February 11, 1975. Moreover, the evidence discloses that there was little, if any, discussion at the February 11, 1975 meeting (attended only by the aggrieved employee and his immediate supervisor), the purpose of which was to give the employee the disputed letter.

An examination of the contents of the letter discloses that it was nothing more than a written notice of shortcomings with no adverse action contemplated unless the aggrieved employee failed to show improvement by June 25, 1975, the date scheduled for the next evaluation of his work performance.1/ Evidence adduced disclosed that no adverse action had been instituted nor had any grievance been filed. In any event, Respondent's failure to advise the aggrieved of "his right to union representation" is not a violation of the Order since the Order does not place any such burden on Respondent. Section 10(e) of the Order, however, clearly imposes upon Respondent an obligation to afford the exclusive representative an opportunity to be present at formal discussions between Respondent and employees concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

1/ The letter is entitled "Level of Competence". Pertinent excerpts are as follows:

> "We have discussed your shortcomings several times and I feel now I must put your inadequate performance of duty in a formal complaint..."
>
> "Although the re-evaluation process will be daily, a formal evaluation will be provided on 30 June 1975."
>
> "Adverse action contemplated in regards to your lax and inefficient work is a reduction in rank."

Copies of the letter were sent only to the Brigade Command Administrative Assistant who was the aggrieved employee's second line supervisor and to the Company Commander of the Headquarters Company to which the aggrieved belonged. No copy was placed in the personnel file of the aggrieved employee.

No evidence has been adduced which would form a basis to conclude that the meeting held on February 11, 1975 was a formal discussion within the meaning of Section 10(e) of the Order. In this respect, I note that no grievance or adverse action had been instituted, the meeting involved solely the aggrieved and his immediate supervisor and the discussion, if any, had no wider ramifications than a discussion concerning that employee's work performance.2/

Accordingly, I conclude that the meeting on February 11, 1975 did not involve a formal discussion pursuant to Section 10(e) of the Order and thus Respondent's action in connection with the meeting was not violative of the Order.

Although there is some dispute as to what was actually said by Respondent's supervisor to Complainant's shop steward on February 25, 1975, evidence adduced discloses the statements were substantially as alleged in the complaint. However, after considering the statements and the content in which they were made, I conclude that they were not violative of the Order. Thus, the evidence discloses that despite the alleged statements, Respondent's supervisor discussed the matter fully with the shop steward and there is no evidence that Respondent's supervisor exhibited a closed mind during the discussion or in any other way objected to the shop steward's discussion of the letter which had been issued to the aggrieved employee.

Having concluded that the actions of Respondent's supervisor on February 25, 1975 were not violative of the Order, I am, therefore, dismissing the complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent.

2/ According to the aggrieved employee, there was no discussion during the meeting; however, Respondent's supervisor contends that there was discussion about the particular points raised in the letter. In view of my disposition of this portion of the complaint, I find it unnecessary to resolve this conflict.

Paul C. McNaught, President
Local 1629, NFFE Case No. 31-9178(CA)

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business November 10, 1975.

During the course of the independent investigation conducted by the Area Director, signed statements were obtained from the following persons:

Chester E. Gorski
Donn C. Elser, Sr.
Donn C. Elser, Jr.

Copies of these statements are enclosed.

Sincerely yours,

THOMAS P. GILMARTIN
Acting Assistant Regional Director
New York Region

CC: Allan F. Bolton, Personnel Officer
Massachusetts Army National Guard
905 Commonwealth Avenue
Boston, Massachusetts 02215

George Tilton, Esq.
Association General Counsel
National Federation of Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3-3-76

663

Mr. Allen H. Kaplan
National Vice-President
American Federation of Government
Employees, AFL-CIO
446 North Central Avenue
Northfield, Illinois 60093

Re: General Services Administration
Region 5, Public Buildings Service
Milwaukee Field Office
Milwaukee, Wisconsin
Case No. 50-13016(RO)

Dear Mr. Kaplan:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's decision setting aside the election in the above-named case.

The National Federation of Federal Employees (NFFE) filed three objections to conduct affecting the results of the election. The NFFE alleged in the first objection that on one or more occasions representatives of the American Federation of Government Employees, AFL-CIO, (AFGE) entered the "swing room" (a lunch and rest area for unit employees) the day before the election, made a slide presentation and distributed literature to the approximately 12 employees present. In this connection, it was alleged that the AFGE failed to obtain permission to use the swing room as required by the Activity's regulations and provisions of the negotiated agreement in effect between the AFGE and the Activity. The NFFE alleged in the second objection that the AFGE improperly solicited employees at their work places during work time. In its third objection, the NFFE alleged that the AFGE distributed misleading statements on the day before the election and at a time when the NFFE was unable to respond.

The Assistant Regional Director found merit to the first objection, and, based on this finding, he determined that the election should be set aside. Under these circumstances, he found it unnecessary to determine the merits of the remaining two objections. In reaching his determination on the first objection, the Assistant Regional Director noted that the AFGE violated certain Activity Regulations and the negotiated agreement to which it was a party by utilizing the "swing room" without permission, whereas the NFFE had not been allowed to use the room. Thus, he concluded

that the AFGE secured a ready-made audience which gave it such an unfair advantage as to seriously damage the "laboratory conditions" required for a representation election.

Under all of the circumstances, I find, contrary to the Assistant Regional Director, that the mere fact that the AFGE conducted a campaign meeting in the "swing room" on the day before the election without authorization and in alleged violation of certain of the Activity's Regulations and the existing negotiated agreement does not warrant setting the election aside in the subject case. In my view, the evidence herein does not establish that the AFGE's conduct in this regard constituted a violation of the Order or impaired the voters' freedom of choice in the election. Thus, there is no evidence that the AFGE engaged in any improper conduct during the meeting involved, nor is there any evidence that the Activity aided the AFGE or acquiesed in its conduct. I also find no merit to the NFFE's second objection. While a labor organization does not have a right under the Order to solicit support for organizational purposes in work areas during work time, I find, under the circumstances herein, that such conduct, standing alone, does not warrant setting the election aside. Finally, I find no merit to the NFFE's third objection. In my view, the disputed leaflet distributed by the AFGE on the day before the election, did not contain gross misrepresentations of material facts, but rather, was in the nature of campaign propaganda which the voters could evaluate for themselves.

Accordingly, the request for review is granted and the case is remanded to the Assistant Regional Director for further proceedings in accordance with the Regulations of the Assistant Secretary.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

GENERAL SERVICES ADMINISTRATION,
REGION 5, PUBLIC BUILDINGS SERVICE,
MILWAUKEE FIELD OFFICE,
MILWAUKEE, WISCONSIN, 1/

Agency and Activity

and **Case No. 50-13016(RO)**

GSA REGION 5 COUNCIL OF NFFE LOCALS,
NATIONAL FEDERATION OF FEDERAL EMPLOYEES, 2/

Petitioner

and

LOCAL 1346, AMERICAN FEDERATION OF
FEDERAL EMPLOYEES, AFL-CIO, 3/

Intervenor

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on May 12, 1975, an election by secret ballot was conducted under the supervision of the Area Director, Chicago, Illinois, on May 21, 1975.

The results of the election, as set forth in the Tally of Ballots, are as follows:

1.	Approximate number of eligible voters	66
2.	Void ballots	1
3.	Votes cast for GSA Region 5 Council of NFFE Locals, NFFE	25
4.	Votes cast for Local 1346, AFGE	30
5.	Votes cast for	0
6.	Votes cast against exclusive recognition	1
7.	Valid votes counted	56

1/ Hereinafter referred to as GSA.
2/ Hereinafter referred to as NFFE.
3/ Hereinafter referred to as AFGE.

8. Challenged ballots _____ 0

9. Valid votes counted plus challenged ballots _____ 56

Challenged ballots are not sufficient in number to affect the results of the election. A majority of valid votes counted plus challenged ballots were indicated on the Tally of Ballots to have been cast for Local 1346, AFGE, AFL-CIO. Timely objections to conduct alleged to have improperly affected the results of the election were filed on May 28, 1975, by NFFE.4/ The objections are attached hereto as Appendix A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Chicago Area Director has investigated the objections and has transferred the case to the undersigned for consideration. Set forth below are the positions of the parties, the essential facts as revealed by an analysis of the objections, and my findings and conclusions with respect to the objections.

Objection No. 1 5/

NFFE charges that on one or more occasions during the day of May 20, 1975, AFGE representatives used the lunch and rest area exclusively provided for unit employees (this area is termed the "swing room") in order to make a slide presentation, distribute literature and otherwise advance AFGE's election campaign. This area - it is alleged - was not previously made available to NFFE representatives. Further, proper permission to enter any of the Activity's areas was not received from Activity management, even though the need for such permission and the means required to secure it are enunciated in GSA's Labor-Management Relations Handbook and the current collective bargaining agreement in effect between GSA and Local 1346, AFGE. Thus, NFFE argues, AFGE was aware of the appropriate procedure to follow in order to secure permission to use the "swing room," yet it chose not to follow it.

A related factor concerns the time at which AFGE's "swing room" campaign meeting took place. It was held on the day prior to the May 21, 1975, representation election and during the noon lunch hour; i.e., at a time when unit employees could reasonably be expected to use the lunch

4/ Evidence in support of the objections was subsequently filed on June 2, 1975, with the Chicago Area Office by NFFE pursuant to Section 202.20 of the Regulations of the Assistant Secretary.

5/ In a letter dated May 28, 1975, and received in the Chicago Area Office on that same date, NFFE's Chief Union Negotiator filed essentially three (3) objections to the conduct of AFGE relative to the instant election. An extension of time was requested in order to file further objections; however, in a letter dated June 2, 1975, the Chicago Area Office denied NFFE's request.

room. NFFE contends that AFGE's usage of the "swing room" during this hour provided it with an unfair campaign advantage in that it utilized a most favorable location at a time guaranteed to provide it with a ready-made audience on the day immediately prior to the election.

This advantage, it is maintained, was not available to NFFE and would not have been available to AFGE even if it had attempted to secure permission. Therefore, NFFE argues that this AFGE campaign advantage served to improperly affect the election results in the instant election by making a free and intelligent choice by the eligible voters impossible.

AFGE, in its response to this first NFFE objection, confirmed the fact that two of its representatives engaged in campaign activity in the "swing room" during the employees' non-duty time. AFGE states that an attempt was made on the morning of May 20, 1975, to obtain appropriate clearance from GSA's buildings manager for use of a room similar to that previously provided NFFE. However, since the buildings manager was not then available, AFGE representatives proceeded to meet with unit employees in the "swing room". AFGE's response noted that approximately "a dozen or so" individuals were in the room at the time and that they voiced no objections to AFGE's presentation. Lastly, AFGE states in its response that a NFFE presentation was made to employees prior to the election.

GSA's response to this objection provides the following information: On May 20, 1975, shortly before the noon hour, an AFGE representative requested to see the buildings manager. When informed that the individual was out to lunch, the AFGE representative left the office without further words. Later, the buildings manager discovered that AFGE had held a campaign drive in the employees' "swing room" while he had been out to lunch. Had AFGE requested permission to use this room, it would have been denied, but would have been given areas similar to those previously offered NFFE for campaigning purposes.

GSA confirms, additionally, that the "swing room" and employees' lunch room are the same locations and are not open for use to the general public, but restricted for use by GSA employees only. Evidence supplied in the form of signed employee statements and relevant documents 6/ indicates that AFGE did not follow GSA regulations governing the use of GSA facilities by labor organizations as stated in Chapter 5, Section 2a of the handbook and Article 7.5 of the agreement. Both make it clear that prior approval of at least the buildings manager or his representative is necessary for union visitation at the employer's installation. The "swing room" is clearly a GSA installation.

6/ "Labor-Management Relations in GSA", dated April 21, 1972 and hereinafter cited as "handbook", together with "Agreement Between Milwaukee Field Office, Public Buildings Service and Local #1346, American Federation of Government Employees, AFL-CIO", effective December 14, 1972.

Next, investigation reveals that NFFE had campaigned at the installation on March 27 and 28, 1975, in areas other than the "swing room". Further, it is shown that NFFE had sought and received the required prior approval to use GSA installation facilities.

Taking into account that by the AFGE's own admission at least "a dozen or so" unit employees were in the "swing room" during the lunch time, and the fact that a sufficient number of those employees in fact voted in the election, it appears that the AFGE presentation conducted on the day before the election at the lunch hour could have had an effect on the election outcome.

To allow a labor organization such an advantage in terms of securing a ready-made audience in conflict with clearly promulgated activity regulations and agreement provisions, and to allow such an advantage to one labor organization and not its competitor, is clearly to seriously damage the "laboratory conditions" required by the Assistant Secretary in the conduct of representation elections pursuant to the Order.7/ It is clear, pursuant to Section 10(d) of the Order, and the Assistant Secretary's issuance of a "Procedural Guide for Conduct of Elections Under Supervision of the Assistant Secretary Pursuant to Executive Order 11491" (dated February 9, 1970), that the Assistant Secretary has the responsibility and obligation to review the behavior of labor organizations during their conduct of election campaigns so as to insure that eligible voters are not improperly affected in determining their ballot choice and that competing ballot choices are not allowed unfair advantages in circumstances associated with the election campaign.

Based on the foregoing, I conclude that conduct occurred that tended to improperly affect the results of the election. Accordingly Objection No. 1 is found to have merit, and I shall sustain it.

Objections No. 2 and No. 3

NFFE charges in this objection that on one or more occasions during the day of May 20, 1975, AFGE representatives "accosted" unit employees at the GSA installation during working hours and at duty stations for purposes of engaging in discussions in support of AFGE's campaign. Next, on these occasions - and during the "swing room" meeting - a memorandum was distributed to unit employees dated May 20, 1975, from Alan Kaplan, AFGE National Vice President. NFFE maintains that this memorandum contained irrelevant, untrue and misleading statements concerning the NFFE organization. The time of the distribution of this material (less than 24 hours before the opening of the polls in the election) is claimed to have effectively prohibited the NFFE from responding to the memorandum.

7/ See, e.g., Hollywood Ceramics Company, Inc., 140 NLRB 221.

I find it unnecessary to comment on these additional NFFE objections, or to reach a conclusion regarding their merit, as my finding relative to the first objection establishes conduct on the part of AFGE that tended to improperly affect the election results.

Having found that Objection No. 1 has merit, it is hereby sustained, and the parties are advised that the election held on May 21, 1975, is hereby set aside, and a rerun election will be conducted as early as possible, but not later than 30 days from the date below, absent the timely filing of a request for review.

Pursuant to Section 202.20(f) and 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business October 28, 1975.

Dated at Chicago, Illinois this 10th day of October, 1975.

R. C. DeMarco, Assistant Regional Director
United States Department of Labor, LMSA
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

Attachments: Appendix A
LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3-11-76

664

Mr. Robert J. Canavan
General Counsel
National Association of
Government Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: Electronics Systems Division
United States Air Force
Hanscom Air Force Base
Bedford, Massachusetts
Case No. 31-9042(CA)

Dear Mr. Canavan:

I have considered carefully your request for review seeking reversal of the Acting Assistant Regional Director's dismissal of the subject complaint alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted in that a reasonable basis for the complaint has not been established.

Accordingly, and noting that the evidence does not establish that the investigation in the matter was insufficient, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U.S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

October 22, 1975 In reply refer to Case No. 31-9042(CA)

Norman W. Downes, President
Local R1-8
National Association of Government Employees
Hanscom Air Force Base (PPP) Stop 25
Bedford, Massachusetts 01731

Re: Hanscom Air Force Base

Dear Mr. Downes:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are necessary inasmuch as you have failed to establish a reasonable basis for the complaint.

In the unfair labor practice charge filed on December 10, 1974, you contend that Respondent had violated Sections 19(5) and (6), (sic) of Executive Order 11491 by initiating a transfer of employees without "conferring, consulting or negotiating" with the exclusive representative and by failing to respond to the repeated oral and written requests by the exclusive representative seeking factual information concerning the proposed move. Although the complaint filed on January 21, 1975 alleges substantially the same acts alleged in the pre-complaint charge, it alleges that Complainant was informally advised of the proposed relocation but failed to specify who furnished such information and the circumstances under which such information was furnished.

In an amended complaint filed on March 6, 1975, Complainant identified the source of the information concerning the proposed relocation as "two employees". The complaint, which failed to identify the employees or describe the circumstances under which such information was furnished, maintains that Respondent has violated Sections 19(a)(1) and (6) of the Order by virtue of the

following actions:[1]

A. Failing to give adequate notice of the proposed relocation to the exclusive representative prior to giving such notice to employees.
B. Failing to designate an official with authority to negotiate an agreement covering employees adversely affected by the relocation.
C. Failing to respond to repeated oral and written requests for information concerning the proposed relocation.

Evidence adduced discloses the following:

1. Complainant is the exclusive representative for certain employees assigned to the Technical Integration Division, Directorate of Acquisitions Support (XR).
2. In November, 1974, a question was raised as to whether some of the XR employees would have to be relocated to provide additional space for another organizational entity.
3. During November, 1974, Respondent surveyed available relocation sites and selected a site in the event relocation would be required and began to draw up plans for a relocation.
4. By letter dated November 13, and 19, 1974, Complainant requested specific information concerning the proposed relocation.
5. By letter dated November 21, 1974, the Deputy Director, XR, advised Complainant

1/ Although the original complaint and the amended complaint fail to set forth sufficient information concerning the names and addresses of all individuals involved and the time and place of occurrence of all the particular acts, I do not find that the complaint in lacking the specificity required by Section 203.3 of the Regulations, is fatally defective with respect to all of the alleged violations. In view of my disposition of the complaint in this matter, I am not dismissing any of the allegations solely on this basis.

that the proposed relocation mentioned in Complainant's November 13, 1974 letter was in the study stage and not actually "proposed". The letter makes reference to a meeting which Respondent attempted to set up with Complainant to clear the air regarding the status of the study; however, Complainant's President allegedly declined to meet unless a certain individual was present. Respondent expressed its desire to meet with Complainant but advised Complainant it reserved the right to designate its representatives.[2]

6. By letter dated December 2, 1975, Complainant acknowledged receipt of the above letter and requested that Respondent respond to its November 13, 1974 letter by answering each question asked. The letter did not respond to Respondent's offer to meet.

No evidence has been adduced which would form a basis to conclude that Respondent notified employees concerning the proposed relocation prior to notifying Complainant; however, it is apparent that Respondent was formulating a relocation plan prior to its letter of November 21, 1975 in which it offered to meet with Complainant to discuss the proposed relocation.

Section 11(a) of the Order provides, in part, that an activity and an exclusive representative shall meet at reasonable times and confer in good faith on matters affecting working conditions. Although the decision to effectuate a relocation of employees is a matter on which the Activity is not obligated to bargain,[3] such reserved decision making authority is not intended to bar negotiations of proce-

2/ It is not clear from the evidence submitted as to when Respondent undertook its survey of relocation sites, i.e., whether it was prior to or subsequent to its letter of November 21, 1975. In my view, if the survey was undertaken prior to November 21, 1975 and a site was actually selected, there is no doubt that a relocation had been "proposed" although it may not have been effectuated.

3/ Section 12(b)(5) of the Order provides that management retains the right to determine the methods, means and personnel by which its operations are to be conducted.

dures to the extent consonant with law and regulations which management will observe in taking the action involved or the impact of its decision on employees adversely affected.

In the instant case there is no evidence that Respondent had made a decision to effectuate the relocation of employees prior to its attempts to meet and discuss the issue with Complainant nor is there any evidence that Complainant requested to bargain on procedures or on impact.

Accordingly, I conclude that Complainant has failed to sustain its burden of proof to establish a reasonable basis to conclude that Respondent's actions in "A" above constituted a violation of the Order.

With respect to item "B" above, the allegation was not raised in the pre-complaint charge and, hence, the complaint is untimely with respect to this allegation. Moreover, management retains the right to designate its bargaining representative(s) and Complainant has not presented any evidence that such designated representatives lacked authority to bargain for Respondent.

With respect to item "C" above, I find no evidence that Respondent was unwilling to respond to Complainant's request for information. The mere fact that it sought a meeting to discuss the issues rather than reply in writing to the specific questions raised by the Complainant is not a sufficient basis to conclude that its actions were violative of the Order. Moreover, Respondent's letter of November 21, 1974, although not fully responsive to Complainant's request, demonstrated a good faith attempt to respond to Complainant's request during a face-to-face meeting. Such a meeting was rejected by Complainant.

Based upon the foregoing, I conclude that Complainant has not sustained its burden of proof to establish a reasonable basis for the complaint for the alleged 19(a)(1) and (6) violations.

I am, therefore, dismissing the complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business November 7, 1975.

Sincerely yours,

THOMAS P. GILMARTIN
Acting Assistant Regional Director
New York Region

CC: Major Nolan Sklute
HDQS, U.S. Air Force
Office of the Judge Advocate General
Litigation Division
Washington, D.C. 20314

Colonel Sigurd L. Jensen, Jr.
Base Commander
Electronic Systems Division
Hanscom Air Force Base
Bedford, Massachusetts 01731

Mr. Samuel Gallo
Acting President, Federal Employees
Metal Trades Council, AFL-CIO
P. O. Box 20310
Long Beach, California 90801

MAR 2 1 1976

Re: Long Beach Naval Shipyard
Long Beach, California
Case No. 72-5350(CA)

Dear Mr. Gallo:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-captioned case, alleging violations of Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

September 17, 1975

Mr. Ande Abbott, President
Federal Employees Metal Trades Council
P. O. Box 20310
Long Beach, CA 90801

Re: Long Beach Naval Shipyard -
FEMTC
Case No. 72-5350

Dear Mr. Abbott:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

In this regard, the parties appear to disagree over an interpretation of the negotiated agreement with respect to the number of Respondent's representatives entitled to attend a first step grievance meeting, a matter which I conclude is best resolved through the procedures established in the agreement. In these circumstances, and since Respondent's conduct was an attempt to supply information relevant to the grievance and did not constitute a unilateral change in the agreement, it does not appear that further proceedings are warranted with respect to the 19(a)(6) allegation raised in the complaint. Moreover, no evidence was submitted with respect to the 19(a)(1) and (2) allegations.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D. C. 20210, not later than close of business September 30, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

3-11-76

666

Ms. Dorothy Hefner
President, Local 1712
American Federation of Government
Employees
P. O. Box 346
Fort Richardson, Alaska 99505

Re: Fort Richardson, Department of the Army
Anchorage, Alaska
Case No. 71-3571(CA)

Dear Ms. Hefner:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the 19(a)(1) and (6) allegations in the subject complaint.

In agreement with the Assistant Regional Director, and based on his reasoning, I find insufficient evidence to establish a reasonable basis for the complaint.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

December 2, 1975

Ms. Dorothy Hefner, President
American Federation of Government
Employees, Local 1712, AFL-CIO
P. O. Box 346
Fort Richardson, Alaska 99505

Re: Fort Richardson -
AFGE, Local 1712
Case No. 71-3571

Dear Ms. Hefner:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. It is alleged that Respondent violated Sections 19(a)(1) and (6) of the Order when it failed to support as negotiable certain items which had been declared non-negotiable by Respondent's Headquarters following its review of the negotiated agreement and this refusal to support the disputed contract items as negotiable is tantamount to bad faith bargaining.

In my view, Respondent exercised its right pursuant to Section 15 of the Order, to transmit the locally negotiated agreement to its Headquarters for review. At that time the Headquarters, in a timely manner, declared certain items to be non-negotiable. Any disagreement to the Headquarter's determination may be resolved through the procedures set forth in Section 11 of the Order. Since there is no evidence that Respondent's actions with regard to the matters deemed non-negotiable were taken in bad faith, it is concluded that there is no reasonable basis for the complaint.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on December 17, 1975.

Sincerely,

Gordon M. Byrnoldt

Mr. Donald Fosdick
President, Local 1658
National Federation of Federal
Employees
540 N Street, S.W.
Apartment S-304
Washington, D.C. 20024

MAR 11 1976

Re: Bureau of Indian Affairs
Department of the Interior
Washington, D.C.
Case No. 22-6420(CA)

Dear Mr. Fosdick:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of your complaint in the above-named case, alleging violation of Section 19(a)(6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

December 5, 1975

Mr. Donald J. Fosdick
540 N Street, S.W.
Apartment S-304
Washington, D.C. 20024
(Certified Mail No. 701736)

Re: Bureau of Indian Affairs
Case No. 22-6420(CA)

Dear Mr. Fosdick:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for complaint has not been established.

You allege that the Bureau of Indian Affairs violated Section 19(a)(6) of the Executive Order by failing to negotiate in good faith the elimination of social responsibilities from the duties of unit employees.

The investigation showed that you allege that a problem had developed with regard to the presence in the office of the non-employee wife of the Director of Indian Education Programs. You attempted on several occasions during May, June and July of 1975 to negotiate with the Respondent a solution to the problem, i.e., to eliminate social responsibilities from the duties of unit employees. You contend that the Respondent, despite promises to resolve the situation, failed to do so thus showing bad faith in its dealings with you. The Respondent contends that the disability retirement application and ultimate transfer of the Director were reasonable solutions to the problem.

You have presented neither evidence nor allegation that either contract negotiations or a grievance filed under the negotiated grievance procedure were involved. Thus there was no unilateral refusal to bargain within the context of either of those forums. Moreover, you have not directly alleged that the Respondent refused to bargain with you after having changed a personnel policy, practice or working condition. Even

assuming arguendo that the thrust of your complaint is that the Respondent refused to bargain regarding such a change, you have presented no evidence that the Respondent sanctioned or approved the actions of the Director's wife. In fact, it would appear from the evidence submitted that the Respondent regarded her actions to be a management problem. In this regard, the evidence shows that the Activity did effect a solution to the problem, i.e., the reassignment of the Director to a different geographic location. Although you do not agree that the reassignment was an acceptable solution, you have presented no evidence that you had proposed an alternative solution which the Respondent had rejected out of hand. Thus, I am of the opinion that you have not shown that the Respondent dealt with your demand for a solution to the problem posed by the Director's wife in anything other than good faith.

In view of the foregoing, I am dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany this request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business December 23, 1975.

Sincerely,

Kenneth L. Evans

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

cc: Mr. J. A. Zuni
Director
Office of Administration
Bureau of Indian Affairs
1951 Constitution Avenue, N.W.
Washington, D.C. 20245
(Certified Mail No. 701737)

bcc: S. Jesse Reuben, OFLMR
John Gribbon, Civil Service Commission
Washington Area Office

668

Mr. James R. Rosa
Staff Counsel
American Federation of Government
Employees
1325 Massachusetts Avenue, N.W.
Washington, D.C. 20005

MAR 17 1976

Re: Immigration & Naturalization Service
Department of Justice
Washington, D.C.
Case No. 22-6276(CA)

Dear Mr. Rosa:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Contrary to the Acting Assistant Regional Director, I find that a reasonable basis for the instant complaint, involving issues concerning the exclusive representative's alleged right of access to certain documents requested during the renegotiation of the parties' negotiated agreement, was established.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is granted, and the instant case is hereby remanded to the Assistant Regional Director who is directed, absent settlement, to issue a notice of hearing

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATIO
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

October 21, 1975

James R. Rosa, Staff Counsel
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Avenue, NW
Washington, D.C. 20005
(Cert. Mail No. 701922)

Re: Department of Justice
Immigration and Naturalization
Service
Case No. 22-6276(CA)

Dear Mr. Rosa:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You allege that the Immigration and Naturalization Service violated Sections 19(a)(1) and (6) of the Executive Order by refusing to furnish you with copies of a September 1973 Personnel Management Evaluation Report: Nationwide Survey U. S. Immigration and Naturalization Service and a January 1975 Personnel Management Action Plan of Immigration and Naturalization Service. You contend that the requested information is necessary and relevant for meaningful contract negotiations.

The investigation revealed that the American Federation of Government Employees (AFGE) had initially requested the above documents in December 1974. The request was renewed on or about May 16, 1975, during contract negotiations between AFGE and the Respondent. Also, on that date, AFGE filed an unfair labor practice charge with the Respondent as a result of Respondent's alleged failure to supply the information. On June 18, 1975, the parties met to discuss, inter alia, the charge. At that point, the possibility of supplying a "sanitized" version of the documents was raised. On August 25, 1975, you requested that the Respondent provide you with the "sanitized" version. The Respondent complied with your request on September 23, 1975; however, you contend that this was not satisfactory.

The Assistant Secretary has established, in precedent decisions, that to justify a 19(a)(1) and (6) violation in the area of information it must be shown that the information requested is necessary for intelligent

bargaining, is not readily available from some other source, and without which the Union will be impeded in carrying out the responsibilities imposed upon it by the Order. 1/ You have presented no evidence to show that the documents AFGE requested were necessary to intelligent bargaining or that AFGE would have been impeded in carrying out your responsibilities without it.

I am of the opinion that there is no obligation on the part of the Respondent to supply AFGE with everything that was involved in formulating their contract proposals. This is particularly true in the absence of any evidence that the Respondent relied on the above-mentioned documents to defend its proposals or support its position. Moreover, from the evidence submitted it appears that the information you requested was an intra-management communications. I find that you had no right, under the Order, to that kind of information, i.e., an intra-management evaluation of the Agency's personnel and labor relations programs. 2/

Based on all the foregoing, I am hereby dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, Washington, D.C. 20216 not later than the close of business November 5, 1975.

Sincerely,

Eugene M. Levine
Acting Assistant Regional Director
for Labor-Management Services

cc: L. F. Chapman, Jr., Commissioner
Department of Justice
Immigration and Naturalization Service
10th and Constitution Ave., NW
Washington, D.C. 20530
(Cert. Mail No. 701923)

1/ Department of Health, Education and Welfare, Social Security Administration, Kansas City Payment Center, Bureau of Retirement and Survivors Insurance, A/SLMR No. 411; Department of Navy, Dallas Naval Air Station, Dallas, Texas, A/SLMR No. 510; Department of Defense, State of New Jersey, A/SLMR No. 539, A/SLMR No. 323, FLRC No. 73A-59.

2/ National Aeronautics and Space Administration (NASA), A/SLMR No. 457, FLRC No. 74A-95. See, particularly, page 5, 1st full paragraph.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-11-76

669

Mr. John F. Galuardi
Regional Administrator
General Services Administration
Region 3
7th & D Streets, S.W.
Washington, D.C. 20407

Re: General Services Administration
Region 3
Case No. 22-6306(AP)

Dear Mr. Galuardi:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability, in the above-named case.

In agreement with the Assistant Regional Director, I find that the issues raised in the unfair labor practice complaint in Case No. 22-5830(CA) differ from the issues raised in the instant grievance and that, therefore, Section 19(d) does not bar further processing of the instant grievance. Thus, the complaint involves the alleged failure of the Activity to furnish the exclusive representative, American Federation of Government Employees, Local 2151, AFL-CIO (AFGE) with certain information in connection with the processing of a grievance, whereas the instant grievance involves the Activity's alleged refusal to allow an AFGE representative access to the Activity's worksite and to certain of its supervisors in connection with the investigation of the complaint in Case No. 22-5830(CA). Thus, as the issues raised in the grievance clearly involves the interpretation and application of Article 1, Section 3 of the parties' negotiated agreement, I find that the matter is grievable and arbitrable pursuant to the provisions of the negotiated procedure.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability and Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Relations, Labor-Management Services Administration, U.S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is 14120 Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania, 19104.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

GENERAL SERVICES ADMINISTRATION
REGION 3

Activity/Applicant

and

Case No. 22-6306(AP)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 2151

Labor Organization

REPORT AND FINDINGS
ON
GRIEVABILITY OR ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds the matter raised by the instant application is grievable and subject to arbitration.

The investigation revealed that the General Services Administration, Region 3, and the American Federation of Government Employees (AFGE), Local 2151, are parties to a two year negotiated agreement signed November 17, 1972 and currently in effect.

The question raised by the Application filed by the Activity is whether a grievance over a denial of union access to certain records is arbitrable if the same issue is also before the Assistant Secretary.

The grievance and subject of the Application was filed May 2, 1975 by AFGE and alleged that the Activity violated Article I, Section 3 of the contract when it refused to allow Mr. Donald MacIntyre, a Union Representative, to visit Mr. Meyer, a Building Manager, and Mr. Williams, Acting Roofing Foreman, on April 17 and 18, 1975. The grievance stated that the purpose of MacIntyre's visit was:

> "...to verify the need to sort out work assignment records of roofers, and the past and present practice of sorting such records at the facility. Mr. MacIntyre informed you that this information was needed

> by the union in order to file an appeal to the Assistant Secretary of Labor for Labor-Management Relations in a pending unfair labor practice case, Case No. 22-5839(CA)." (Later corrected to Case No. 22-5830(CA))

The grievance alleged further that Article I, Section 3 provides for union visits to worksites when related to its responsibilities under the Agreement or Executive Order 11491, as amended.

In its reply of May 9, 1975 to the grievance, Management stated that:

> "While Article I, Section 3 does permit union representatives to visit worksites, I must presume the implication is there for management to deny this right when, in its judgement, it considers such visits non-productive, unreasonable, or disruptive."

GSA also argued in its reply that, since the matter of union access to certain work records was currently before the Assistant Secretary in an unfair labor practice proceeding, Case No. 22-5830(CA), the Union could gain nothing further by such visits.

The grievance was arbitrated on August 8, 1975 and on August 21, 1975, Arbitrator Groner granted the Activity's motion for a delay in the proceedings until after the Assistant Secretary has determined the arbitrability of the grievance pursuant to the application filed by GSA.

In its application, GSA contended that Section 19(d) of Executive Order 11491, as amended, barred the Union from filing its grievance of May 2, 1975 since the matter of union access to work records was currently before the Assistant Secretary in an unfair labor practice proceeding, Case No. 22-5830(CA) and Section 19(d) of the Order specifically provides that:

> "...Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures."

The Union argued that matters raised by its unfair labor practice complaint differed from those raised by its grievance. The complaint, it contended, concerned a refusal of union access to work records on January 7, 1975 while the grievance pertained to the Union's right to visit supervisors and worksites on April 17 and 18, 1975 per Article I, Section 3 of the negotiated agreement.

Relevant portions of that Agreement are as follows:

"ARTICLE I - UNION REPRESENTATION

Section 3. Subject to security and safety regulations, permission will be granted to all Union officers and nonemployees serving as Union representatives to visit worksites to carry out their responsibilities under the terms of Executive Order 11491, as amended, and this agreement. The Employer will be advised in advance of the purpose and time of intended visits.

ARTICLE XX - GRIEVANCE PROCEDURE

Section 1. The purpose of this article is to provide for a mutually acceptable method for the prompt and equitable settlement of grievances over the interpretation or application of this agreement. This negotiated procedure shall be the exclusive procedure available to the Union and the employees in the bargaining unit for resolving such grievances.

ARTICLE XXI ARBITRATION

Section 1. If the Employer and the Union fail to settle any grievance processed under the negotiated grievance procedure, such grievance, upon written request by either party within fifteen (15) working days after issuance of the Employer's final decision, shall be submitted to arbitration.

Section 3. If for any reason either party refuses to participate in the selection of an arbitrator, the Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case. However, it is understood that all arbitrability disputes shall be referred to the Assistant Secretary of Labor for Labor-Management Relations for decision."

A review of both the complaint before the Assistant Secretary in Case No. 22-5830(CA) and the grievance of May 2, 1975 reveals that they concerned two separate events with different allegations. The alleged violation of January 7, 1975, in the unfair labor practice complaint, concerned the Union's access to work records while the grievance involved Union access to supervisors and worksites on April 17 and 18, 1975 pursuant to Article I, Section 3 of the Agreement. While the end result, desired by AFGE, may have been the same in both events, that of reviewing work records relative to hazardous duty pay, the grievance clearly concerns a disagreement over the interpretation of Article I, Section 3 of the contract; with the Union arguing that Article I, Section 3 grants its access to supervisors and worksites while the Activity interprets that section as granting management the right to deny such access.

This distinction between the unfair labor practice complaint and the grievance is significant enough to find the Activity's allegation of a bar pursuant to Section 19(d) of the Order is without merit since the subject grievance of the grievance before us concerns a disagreement over the interpretation and application of the contract. Under that agreement, Article XX, Section 1 of the Grievance Procedure provides that:

"The purpose of this article is to provide for a mutually acceptable method for the prompt and equitable settlement of grievances over the interpretation or application of this agreement."

And, Article XXI, Arbitration, provides in Section 1:

"If the Employer and the Union fail to settle any grievance processed under the negotiated grievance procedure, such grievance...shall be submitted to arbitration."

In summary, the matter raised by the instant application concerns the interpretation of Article I, Section 3 of the Agreement between the parties and is subject to resolution through the negotiated grievance and arbitration procedure. Accordingly, the arbitration held on August 8, 1975 between the parties concerning the grievance of May 2, 1975 was the proper forum for resolution of this matter.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, not later than the close of business October 20, 1975.

Dated: October 3, 1975

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-17-76

Ms. Janet Cooper
Staff Attorney
National Federation of Federal Employees
1016 16th Street, N.W.
Washington, D.C. 20036

670

Re: U.S. Information Agency
Washington, D.C.
Case No. 22-6345(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this matter are unwarranted. Thus, the evidence establishes that the proposed restructuring of the subject position description into five separate descriptions involved a realignment of job content and, as such, is excluded from the obligation to meet and confer under the Federal Labor Relations Council's decision in International Association of Firefighters, Local F-111, and Griffiss Air Force Base, Rome, New York, FLRC No. 71A-30. Moreover, while the Council's decision in Local Lodge 830, International Association of Machinists and Aerospace Workers, and Louisville Naval Ordnance Station, Department of the Navy, FLRC No. 73A-21, makes the clarification of general terms in a finalized job description a negotiable subject, the evidence in the instant case establishes that the Activity was awaiting advice from the Civil Service Commission before taking any final action regarding the proposed job descriptions. Hence, in my view, as the instant job descriptions had not been finalized when they were submitted to the Civil Service Commission and were submitted to the Commission for the latter's advice, the Activity was not obligated to meet and confer (assuming arguendo such obligation exists) with the Complainant concerning the matter prior to the submission of the descriptions to the Commission.

Accordingly, and noting also that the Activity had solicited the Complainant's comments and suggestions on the new job descriptions, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

RE: United States Information Agency
Case No. 22-6345(CA)
22-06345(CA)

Ms. Janet Cooper
Staff Attorney
National Federation of Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006

Dear Ms. Cooper:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You allege that the United States Information Agency violated Sections 19(a)(1) and (6) of the Executive Order by refusing to negotiate over the formulation of new job descriptions for certain employees whom your Union represents.

The investigation revealed that on or about July 2, 1974, after conferring with AFGE, Local 1812, NFFE, Local 1447 and NFFE, Local 1418, the Respondent submitted to the Civil Service Commission a proposal that certain Wage Grade positions be reclassified to General Schedule (one of the positions involved was that of Radio Broadcast Technician). AFGE, Local 1812 and NFFE, Local 1447 concurred with the proposal while NFFE, Local 1447 opposed it. On or about January 29, 1975, the Civil Service Commission rendered its opinion with regard to some of the positions. Simultaneously, it requested that the Respondent redescribe the omnibus position description of Radio Broadcast Technician into five or more position descriptions to reflect the several components which were included in the omnibus description. On or about April 23, 1975, the Respondent submitted the five position descriptions to the Commission for advisory classification. Although the Respondent had, prior to the April 23, offered to receive comments on the position descriptions from the Union, the Union submitted none.

From the evidence submitted, I am of the opinion that what was involved in the Respondent's actions was a realignment of job content. The Federal Labor Relations Council has held that job content, in general, falls under § 11(b) of the Executive Order and is thus excluded from the obligation to bargain.[1]

More importantly, from the evidence submitted it appears that no decision has been made by the Respondent to adopt the 5 position descriptions in place of the one. Thus nothing has been submitted to show that the Respondent has foreclosed bargaining insofar as is required by the Executive Order should Respondent wish to adopt the new position descriptions.

In view of the foregoing, I am dismissing the complaint in its entirety.

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[1] International Association of Fire Fighters, Local F-111, and Griffiss Air Force Base, Rome, New York FLRC No. 71A-30.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Attention: Office of Federal Labor-Management Relations, Washington, D.C. 20216 not later than the close of business

Sincerely,

Kenneth L. Evans
Area Regional Director
for Labor Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-17-76

671

Mr. Lem R. Bridges
Assistant Regional Director, LMS
U.S. Department of Labor
Room 300, 1371 Peachtree Street, N.E.
Atlanta, Georgia 30309

Re: U.S. Army Aviation Center
Fort Rucker, Alabama
Case No. 40-6523(CA)

Dear Mr. Bridges:

This is in connection with the request for review filed by the Complainant in the above-named case. The evidence revealed that a grievance was filed on behalf of certain bus drivers protesting the imposition of additional duties. The grievance subsequently was withdrawn and an unfair labor practice complaint was filed alleging that the Respondent had violated Section 19(a)(1) and (4) of Executive Order 11491, as amended, by imposing additional duties on the drivers in retaliation for the filing of the aforementioned grievance. The Acting Assistant Regional Director found, among other things, that the issue raised in the unfair labor practice complaint had been raised previously in the grievance and dismissed the complaint pursuant to Section 19(d) of the Order.

Under all of the circumstances, it is concluded that an additional investigation should be conducted to ascertain what, if any, additional duties were assigned to the drivers other than grass cutting prior to the filing of the instant grievance; what was discussed during the two operative steps of the negotiated grievance procedure; and the precise instances when the alleged retaliatory conduct occurred. Thus, such additional investigation should attempt to ascertain whether the additional duties which are alleged as retaliatory in nature were assigned to the drivers prior to the filing of the grievance, after the grievance was filed but before the pre-complaint charge was filed, or after the charge was filed.

Accordingly, the case is hereby remanded to the Assistant Regional Director for additional investigation and the issuance of a supplemental decision.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

November 12, 1975

Mr. Noble R. Dean, President
Wiregrass Metal Trades Council, AFL-CIO
Post Office Box 728
Fort Rucker, Alabama 36360

Re: U. S. Army Aviation Center
Fort Rucker, Alabama
Case No. 40-6523(CA)

Dear Mr. Dean:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

Investigation discloses that Wiregrass Metal Trades Council is the exclusive representative of a unit of Wage Grade employees of the United States Army Aviation Center and United States Army Aviation School, Fort Rucker, Alabama. There is a labor-management agreement applicable to the unit in effect. On June 5, 1975, David Norwood, a bus driver in the Transportation Motor Pool filed a grievance under the negotiated grievance procedure alleging "discrimination against Bus Drivers in cutting grass and policing up the Transportation Motor Pool Area." The corrective action requested was that bus drivers be required to clean and police only their immediate work area. A meeting was held with Respondent on June 13, 1975 to attempt to settle the grievance. The grievance was terminated by the Respondent by letter dated June 27, 1975 for failure to observe time limits as prescribed in the agreement. By letter of the same date you advised the Respondent that the grievance was being withdrawn and that an unfair labor practice complaint would be filed.

The complaint alleges that as a result of the grievance by Norwood all bus drivers have been discriminated against in violation of Sections 19(a)(1) and (4) of the Order. You allege that the bus drivers in the Transportation Motor Pool have been required not only to cut grass but to do other details for the Motor Pool including painting the parking area and cutting grass and trimming hedges around other buildings and work sites. You also contend that as a result of the grievance, the bus drivers' job descriptions were rewritten.

It is the Respondent's position that Section 19(d) of the Order bars the filing of the complaint inasmuch as the issue raised in the complaint is the same issue which was raised in the grievance by Norwood. Further, it is the Respondent's position that additional duties and assignments were given to the bus drivers but that these assignments were as a result of funding and manpower considerations. Respondent claims that it was exercising certain management rights under 12(b) of the Order in imposing the duties assigned to the bus drivers.

With respect to the allegation that Respondent has violated Section 19(a)(4) of the Order, this Section deals with discipline or discrimination against an employee for filing a complaint or giving testimony under the Order. There is no evidence that Norwood or any other employee filed a complaint under the Order. Filing a grievance is not filing a complaint under the Order; therefore, there is no reasonable basis for the 19(a)(4) complaint.

With respect to the 19(a)(1) allegation, the Assistant Secretary has treated the issue of the Section 19(d) bar to jurisdiction in United States Department of Air Force, Warner Robins Air Materiel Area, A/SLMR No. 340. Inasmuch as the matter of the grass cutting duties was raised as an issue in the grievance by Norwood, the issue cannot be raised under the unfair labor practice procedure. Regarding your allegation that additional duties such as policing the motor pool area, painting and trimming hedges were imposed and job descriptions of the bus drivers were changed, there is no evidence that this action by Respondent was as a result of Norwood or any other employee having engaged in Section 1(a) activity. I conclude that the additional duties assigned by Respondent and the subsequent change in job descriptions was in connection with the original assignment of grass cutting duties made prior to the filing of the grievance by Norwood. Thus, there is no reasonable basis for the 19(a)(1) complaint.

Inasmuch as I have concluded that Section 19(d) is dispositive of the issue in the complaint, I find it unnecessary to decide whether the Respondent was exercising rights retained under Section 12(b) of the Order in assigning the grass cutting and related duties to the bus drivers.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216 not later than the close of business November 28, 1975.

Sincerely yours,

WILLIAM D. SEXTON
Acting Assistant Regional Director
for Labor-Management Services

cc:

Dan M. Jamitolo
Major, AGC
Adjutant General
Department of the Army
Headquarters United States Army
Aviation Center and Fort Rucker
Fort Rucker, Alabama 36362

3-17-76

672

Mr. William B. Roach
President, Local 796
National Federation of Federal
Employees
SR1, Box 380
Hot Springs, Arkansas 71901

Re: U. S. Department of Agriculture
Forest Service
Ouachita National Forest
Hot Springs, Arkansas
Case No. 64-2757(CA)

Dear Mr. Roach:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings on your complaint are unwarranted. Thus, as the evidence establishes that the change in criteria used to evaluate employees' firefighting qualifications occurred prior to the certification of the Complainant as exclusive representative, I find that the Activity was under no obligation to meet and confer with the subsequently certified exclusive representative concerning the decision to change the criteria. Moreover, with respect to the obligation to meet and confer concerning the impact of the new criteria on the unit employees, there was no evidence that the Complainant at any time requested the Activity to meet and confer in this regard. Cf. U. S. Department of Air Force, Norton Air Force Base, A/SLMR No. 261.

Accordingly, and noting that the allegation that the Activity failed to consult with the Complainant concerning an April 8, 1975, fire qualifications emergency directive was raised for the first time in the request for review and, therefore, cannot be considered by the Assistant Secretary (see Report on Ruling of the Assistant Secretary, No. 46 (copy enclosed)), your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachments

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET - ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

November 18, 1975

Mr. William B. Roach, President
Local 796, National Federation of
Federal Employees
SR 1, Box 380
Mount Ida, Arkansas 71957

Certified Mail #201922

In Reply refer to: 64-2757(CA)

Dear Mr. Roach:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. The criteria under which the new Forest Fire Qualification Cards were issued was published prior to certification of Local 796 as the exclusive representative and implementation of the criteria was begun prior to certification. The fact that the results of the change became apparent subsequent to the certification of Local 796 imposes no obligation on the Activity to negotiate regarding pre-existing conditions of employment.

Moreover, you have failed to sustain a burden of proof as required by Section 203.6(a)(e) of the Assistant Secretary's Regulations that the implementation of the subject criteria impacted adversely on the employees in the unit.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8 of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business December 3, 1975.

Sincerely,

Cullen P. Keough

Mr. Raymond L. Reynolds
704 Randolph Avenue
Huntsville, Alabama 35801

MAR 16 1976

Re: Civil Service Commission
Atlanta Region
Atlanta, Georgia
Case No. 40-6699(CA)

Dear Mr. Reynolds:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section "19(a)(6) and 19(b)(6)" of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, the evidence herein does not establish a reasonable basis for your allegation that the Respondent has violated your rights assured by the Order.

Accordingly, and as in my view the Area Director's investigation of this matter was sufficient, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

December 19, 1975 In reply refer to Case No. 30-6558(CO)

Mr. Albert P. Vaitaitis
c/o U.S. Mint
320 W. Colfax Avenue
Denver, Colorado 80204

Re: AFGE Mint Council

Dear Mr. Vaitaitis:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Thus, in your complaint you allege that the AFGE Mint Council interfered with your rights and the right of other professional employees of the Bureau of the Mint, in violation of Section 19(b)(1) of the Order, when it negotiated and signed a collective bargaining agreement covering both the professional and non-professional employees of the Bureau of the Mint.

Evidence discloses that the American Federation of Government Employees was certified as the exclusive representative for separate units of professional and non-professional employees of the Bureau of the Mint on September 24, 1973. On December 19, 1974, the AFGE Mint Council on behalf of the American Federation of Government Employees entered into a collective bargaining agreement with the Bureau of the Mint. Article 1, Section 1 of the agreement provides, in part, "The Department of Treasury, Bureau of the Mint, hereinafter referred to as the Bureau, has recognized the American Federation of Government Employees, AFL-CIO, hereinafter referred to as the Union, as the exclusive representative of all employees in the Units ... as follows:

a) All professional employees of the Department of the Treasury, Bureau of the Mint.
b) All nonprofessional employees of the Department of the Treasury, Bureau of the Mint.

Excluded are: confidential employees, ..."

Your basic contention is that the collective bargaining agreement was negotiated and signed without any representation, authorization of and consultation with the professional employees of the Bureau of the Mint. Evidence adduced discloses that the views and suggestions of professional employees were solicited both prior to and during negotiations. No evidence has been adduced that Respondent has failed to properly represent the interest of the professional employees nor is there any evidence that Respondent failed to consider the views of the professional employees prior to and during negotiations.

Furthermore, although the professional employees chose to be represented in a separate unit, such a vote did not require that a separate labor organization or other distinct organizational element within a labor organization be established to represent the interest of the professional employees. An examination of the collective bargaining agreement discloses that it is a multiple unit agreement. Nothing in the Order prohibits a labor organization from negotiating such an agreement. To quote from the Study Commission report of 1969, which led to the issuance of the Order:

> " ... an agency and a labor organization or group of labor organizations should be free to engage in joint negotiations covering any combination of units at any level of the agency where the parties are in agreement that such an agreement will provide for more productive negotiations ..."

Based upon the foregoing, I find that you have failed to sustain the burden of proof to establish a reasonable basis for the alleged violation.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business January 5, 1976.

Sincerely yours,

Thomas P. Gilmartin
Acting Regional Administrator
New York Region

Mr. Raymond L. Reynolds
704 Randolph Avenue
Huntsville, Alabama 35801

MAR 16 1976

Re: Local 1858, American Federation of Government Employees, AFL-CIO
(U. S. Army Missile Command
Redstone Arsenal, Alabama)
Case No. 40-6700(CO)

Dear Mr. Reynolds:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(b)(6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, I find that there was no evidence to show that you were involved in any proceeding in which there was an obligation on the part of the Respondent to meet and confer with the U. S. Army Missile Command concerning the position of the Housing Project Manager. Moreover, the right to challenge the obligation of a labor organization to meet and confer with an agency or activity does not extend to an individual unit employee.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. — ROOM 300

January 21, 1976 ATLANTA, GEORGIA 30309

Mr. Raymond L. Reynolds
704 Randolph Avenue
Huntsville, Alabama 35801

RE: Local 1858, American Federation of Government Employees, AFL-CIO
Case No. 40-6700 (CO)

Dear Mr. Reynolds:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Investigation discloses that Respondent is the exclusive representative of a unit of employees of the U. S. Army Missile Command (MICOM). You have been employed by MICOM since 1950. On July 3, 1975, the position of Housing Project Manager, GS-11, was announced and you applied. You were rated highly qualified, but you were not selected for the position. You have been a member in good standing of Respondent local since 1960.

You allege that Respondent's failure to consult, confer or negotiate in good faith with MICOM was the cause of your not being promoted to the Housing Project Manager position. You also allege that "this action was the climax of a long history of illegal, malfeasant, nonfeasant actions." You also allege that Respondent has violated Section 19(c) of the Order.

With respect to 19(c), that section deals with denial of membership in a labor organization which is the exclusive representative. There is no evidence that you have been denied membership in the Respondent labor organization. Accordingly, there is no reasonable basis for the 19(c) allegation. Moreover, Section 203.2(a)(3) of the Regulations of the Assistant Secretary requires that before filing a complaint with the Assistant Secretary, a charge must be filed which contains a clear and concise statement of the facts including the time and place of the particular acts. The pre-complaint charge you filed with Respondent on September 7, 1975, did not raise the issue of 19(c). The allegation of denial of membership was raised for the first time in the complaint. Therefore, the complaint with respect to 19(c) is procedurally defective.

With respect to the allegation that Respondent failed to consult, confer or negotiate with MICOM, there is no evidence that you filed a grievance or that you were involved in any other proceeding on which

there was an obligation on the part of AFGE to meet and confer with MICOM. Nor is there any evidence that MICOM requested or that Respondent either refused or failed to meet and confer concerning the Housing Project Manager position. Accordingly, absent any pending grievance over your failure to obtain the Housing Manager position, there was no obligation on the part of Respondent to consult and confer with MICOM. Moreover, the right to challenge the fulfillment by a labor organization of its obligation to bargain with an agency does not extend to a unit employee. Therefore, you may not challenge any failure or refusal of Respondent to consult, confer or negotiate with MICOM on the matter of Respondent's failure to promote you or on any other matter. Accordingly, I find that there is no reasonable basis for the 19(b)(6) complaint.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business February 5, 1976.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

cc: Mr. Raymond B. Swaim, President
Local 1858, American Federation of
Government Employees, AFL-CIO
Building 3648
Redstone Arsenal, Alabama 35809

Commanding General
U. S. Army Missile Command
Redstone Arsenal, Alabama 35809
ATTENTION: Mr. John Mikitish

675

Mr. Raymond L. Reynolds
704 Randolph Avenue
Huntsville, Alabama 35801

Re: U. S. Army Missile Command
Redstone Arsenal, Alabama
Case No. 40-6698(CA)

MAR 16 1976

Dear Mr. Reynolds:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(a)(6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, in my view, the obligation to meet and confer is owed by an agency or activity to the labor organization which is the exclusive representative of employees in the unit and the right to challenge the agency's or activity's obligation in this regard runs solely to that labor organization and not to an individual unit employee.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

January 21, 1976 ATLANTA, GEORGIA 30309

Mr. Raymond L. Reynolds
704 Randolph Avenue
Huntsville, Alabama 35801

RE: U. S. Army Missile Command
Redstone Arsenal, Alabama
Case No. 40-6698(CA)

Dear Mr. Reynolds:

The above-captioned complaint alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Investigation discloses that Local 1858, American Federation of Government Employees, AFL-CIO, is the exclusive representative of a unit in which you are employed. Investigation further discloses that you are a General Supply Specialist, GS-11, in the Equipment Management Division. You have been employed by Respondent since 1950 and for a period of eight years you were Project Housing Manager. You were transferred from that position during a reduction in force in 1971. On July 3, 1975, the position of Housing Project Manager, GS-11, was announced and you applied. You were rated highly qualified, but you were not selected for the position. The complaint alleges violation of Sections 19(a)(1) and (6) as a result of Respondent's failure to consult or negotiate with Local 1858 in good faith. You allege that such refusal resulted in your not being promoted to the Housing Project Manager position. You further allege that there has been "a long history of illegal, malfeasant, nonfeasant acts by the Agency."

The right to challenge the fulfillment by any agency of its obligation to bargain extends to the exclusive representative and not to a unit employee. Therefore, you may not challenge any failure or refusal of Respondent to consult, confer or negotiate with Local 1858 on your promotion or on any other matter. Accordingly, I find that there is no reasonable basis for the 19(a)(6) allegation. (See U. S. Department of Agriculture, Forest Service, Regional Office, Juneau, Alaska, A/SLMR No. 595).

There is no allegation or evidence of an independent 19(a)(1) violation. Your allegation of violation of 19(a)(1) is wholly derivative of the 19(a)(6) charge. Accordingly, there is no basis for the 19(a)(1) complaint.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business February 5, 1976.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

cc: Commanding General
U. S. Army Missile Command
Redstone Arsenal, Alabama 35809
ATTENTION: Mr. John Mikitish

Mr. Raymond B. Swaim, President
Local 1858, American Federation of
Government Employees, AFL-CIO
Building 3648
Redstone Arsenal, Alabama 35809

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

MAR 17 1976 676

Mr. Albert P. Vaitaitis
c/o U.S. Mint
320 W. Colfax Avenue
Denver, Colorado 80204

Re: AFGE Mint Council
New York, New York
Case No. 30-6558(CO)

Dear Mr. Vaitaitis:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Acting Assistant Regional Director, and based on his reasoning, I find that reasonable basis has not been established for the instant complaint and, consequently, further proceedings in this matter are unwarranted.

Accordingly, and noting the absence of any evidence that the National Mint Council has not properly represented the interests of professional employees of the Bureau of the Mint, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFCRE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

December 19, 1975 In reply refer to Case No. 30-6558(CO)

Mr. Albert P. Vaitaitis
c/o U.S. Mint
320 W. Colfax Avenue
Denver, Colorado 80204

Re: AFGE Mint Council

Dear Mr. Vaitaitis:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Thus, in your complaint you allege that the AFGE Mint Council interfered with your rights and the right of other professional employees of the Bureau of the Mint, in violation of Section 19(b)(1) of the Order, when it negotiated and signed a collective bargaining agreement covering both the professional and non-professional employees of the Bureau of the Mint.

Evidence discloses that the American Federation of Government Employees was certified as the exclusive representative for separate units of professional and non-professional employees of the Bureau of the Mint on September 24, 1973. On December 19, 1974, the AFGE Mint Council on behalf of the American Federation of Government Employees entered into a collective bargaining agreement with the Bureau of the Mint. Article 1, Section 1 of the agreement provides, in part, "The Department of Treasury, Bureau of the Mint, hereinafter referred to as the Bureau, has recognized the American Federation of Government Employees, AFL-CIO, hereinafter referred to as the Union, as the exclusive representative of all employees in the Units ... as follows:

a) All professional employees of the Department of the Treasury, Bureau of the Mint.
b) All nonprofessional employees of the Department of the Treasury, Bureau of the Mint.

Excluded are: confidential employees, ..."

Your basic contention is that the collective bargaining agreement was negotiated and signed without any representation, authorization of and consultation with the professional employees of the Bureau of the Mint. Evidence adduced discloses that the views and suggestions of professional employees were solicited both prior to and during negotiations. No evidence has been adduced that Respondent has failed to properly represent the interest of the professional employees nor is there any evidence that Respondent failed to consider the views of the professional employees prior to and during negotiations.

Furthermore, although the professional employees chose to be represented in a separate unit, such a vote did not require that a separate labor organization or other distinct organizational element within a labor organization be established to represent the interest of the professional employees. An examination of the collective bargaining agreement discloses that it is a multiple unit agreement. Nothing in the Order prohibits a labor organization from negotiating such an agreement. To quote from the Study Commission report of 1969, which led to the issuance of the Order:

> " ... an agency and a labor organization or group of labor organizations should be free to engage in joint negotiations covering any combination of units at any level of the agency where the parties are in agreement that such an agreement will provide for more productive negotiations ..."

Based upon the foregoing, I find that you have failed to sustain the burden of proof to establish a reasonable basis for the alleged violation.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business January 5, 1976.

Sincerely yours,

Thomas P. Gilmartin
Acting Regional Administrator
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-16-76

677

Mr. Thaddeus Dais
5912 Catherine Street
Philadelphia, Pennsylvania 19143

Re: International Brotherhood of Electrical Workers, Local 902 (Philadelphia Naval Shipyard) Case No. 20-5335(CO)

Dear Mr. Dais:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that further proceedings in this unfair labor practice matter are unwarranted. Thus, in my view, the evidence herein did not establish that the disciplinary action taken against you in this matter was based on your filing a grievance under a negotiated grievance procedure.

Accordingly, and in the absence of any evidence to indicate that your complaint in this matter was handled improperly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the subject unfair labor practice complaint, is denied. It should be noted, however, that the foregoing disposition of your unfair labor practice complaint filed under Section 19 of the Order would not preclude you from filing a standards of conduct complaint in this matter under Section 18 of the Order and Section 204.2 of the Assistant Secretary's Regulations.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

November 20, 1975

Mr. Thaddeus Dais
5912 Catherine Street
Philadelphia, Pa. 19143
(Cert. Mail No. 701541)

Re: International Brotherhood of Electrical Workers Local 902
Case No. 20-5335(CO)

Dear Mr. Dais:

The above-captioned case alleging a violation of Section 19(b)(1) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The complaint alleges that disciplinary action taken by the union violated your right to file a grievance without fear of reprisal.

The investigation revealed that in June 1974 a Mr. Walter Lesyk, Jr., an agent of the Respondent, filed a third step grievance on your behalf. Subsequently, the Activity denied the grievance. Thereafter, in a letter you accused Mr. Lesyk of deliberately mishandling your grievance and acting in collusion with management with respect to its solution. In September 1974, Mr. Lesyk filed charges against you under the provisions of the union constitution. Subsequently, after a hearing, you were found guilty of the charges levied against you by Mr. Lesyk.

Under Section 19(c) of the Executive Order, a labor organization may enforce discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of the Order. The Constitution of the International Brotherhood of Electrical Workers provides for disciplinary action against members who commit offenses of the type with which you were charged, and nothing in the Executive Order precludes a union from such action. 1/

1/ Local 1858, American Federation of Government Employees, Redstone Arsenal, Alabama A/SLMR #275

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany this request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business November 5, 1975.

Sincerely,

Kenneth L. Evans

Kenneth L. Evans
Assistant Regional Director
for Labor Management Services

cc: Mr. Walter Lesyk, President
International Brotherhood of
Electrical Workers, Local 902
Philadelphia Naval Shipyard
Philadelphia, Penna. 19143
(Cert. Mail No. 701542)

Philadelphia Metal Trades Council
Philadelphia Naval Shipyard
Philadelphia, Penna. 19143

R.R. Britt
Head/Employee Relations Division
Philadelphia Naval Shipyard
Philadelphia, Penna. 19143

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3-16-76

678

Mr. Richard Taylor
National Representative
American Federation of Government
Employees, AFL-CIO
3501 Arden Creek Road
Sacramento, California 95825

Re: Veterans Administration
Regional Office
Reno, Nevada
Case No. 70-4917

Dear Mr. Taylor:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the alleged violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based upon his reasoning, I find that the Section 19(a)(1), (2) and (4) allegations in the instant complaint were not filed timely pursuant to Section 203.2(b)(2) of the Assistant Secretary's Regulations and, consequently, further proceedings on such allegations are unwarranted.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's partial dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

December 9, 1975

Mr. Richard E. Taylor
AFGE National Representative
3501 Arden Creek Road
Sacramento, CA 95825

RE: VA Regional Office
Reno, Nevada -
AFGE, Local 2152, AFL-CIO
Case No. 70-4917

Dear Mr. Taylor:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It is my intention to hold in abeyance the portion of the complaint which alleges that the exclusive representative was not given the opportunity to be present at a counselling session for employee Mann which resulted in his termination and on which an unfair labor practice charge was filed May 12, 1975. On May 9, 1975, the Federal Labor Relations Council issued an Information Announcement (copy enclosed) which indicated that the Council had determined that the following is a major policy issue which has general application to the Federal labor-management relations program and upon which it intends to issue a major policy statement:

> "Does an employee in a unit of exclusive recognition have a protected right under the Order to assistance (possible including personal representation) by the exclusive representative when he is summoned to a meeting or interview with agency management, and, if so, under what circumstances may such a right be exercised?"

As certain issues involved in the 19(a)(1) and (6) allegation in the subject case are related to the major policy issue currently under review by the Council, in my view, it would effectuate the purposes and policies of the Order to defer further action on that portion of the instant case pending the Council's resolution of the above-noted major policy issue.

However, it does not appear that further proceedings are warranted with regard to the alleged 19(a)(1)(2) and (4) violations that employee Mann was terminated because of his union activities inasmuch as that portion of the complaint was not timely filed pursuant to Section 203.2 of the Regulations.

It is your position that Complainant's letter of May 12, 1975, is the unfair labor practice charge for all the allegations contained in the complaint. Respondent contends that a charge had already been filed with respect to the 19(a)(1)(2) and (4) allegations to which it had given a final decision.

The investigation discloses that by letter dated March 25, 1975, AFGE Local 2152 Steward Robert E. Tangen filed a "union grievance" with David Thorkildson, a supervisor at the Veterans Administration Regional Office, Reno, Nevada, alleging that employee Mann was terminated on March 25, 1975, because of his support for union activities. Pursuant to that letter, representatives of Complainant and Respondent met on April 7, 1975, in an attempt to settle informally the dispute regarding Mann's termination. Representing Complainant at the meeting were the Local's president, the vice-president, and steward Tangen.

From the evidence submitted by both parties, it is clear that at the meeting both parties treated the March 25, 1975, letter as an unfair labor practice charge alleging that the termination of employee Mann violated Executive Order 11491, as amended. Respondent responded to the letter and meeting by letter dated April 10, 1975, the contents of which clearly indicated that Respondent understood the March 25, 1975, letter to be an unfair labor practice charge and which stated that Respondent's final response to the charge was that no violation had occurred. Upon receipt of this letter, Complainant made no objection to the consideration of the March 25, 1975, letter as a charge.

Complainant now contends that the March 25, 1975, letter should not have been considered as a charge because it was not signed by the Local president. However, no evidence was submitted to indicate that the steward who did sign was not an authorized representative of the Local. Moreover, the Local president was aware that the letter had been filed, he fully participated in the meeting to discuss the letter, and he never indicated that he wanted the letter treated as anything other than an unfair labor practice charge.

Additionally, I find that the March 25, 1975, letter met the requirements of a charge in accordance with Section 203.2(a)(1) and (3) of the Regulations in that it was filed directly with the party against whom it was directed and it contained a clear and concise statement of the facts constituting the alleged unfair labor practice.

Based on the foregoing, I find that the portion of the complaint alleging that the termination of employee Mann was a violation of the Order was untimely filed in that it was filed more than 60 days from service of Respondent's final decision on the charge.

It should be noted further that if the March 25, 1975, letter was not viewed as an unfair labor practice charge, it would appear that the letter was a grievance. In that case, the termination of Mann could not be raised as an unfair labor practice since Section 19(d) of the Order provides that issues raised under a grievance procedure may not also be raised under the unfair labor practice procedure.

Accordingly, I am dismissing that portion of the complaint alleging a violation of Section 19(a)(1)(2) and (4) of the Order. As indicated, I intend to hold the 19(a)(1) and (6) portion of the complaint in abeyance pending the Council's action on its May 9, 1975, information announcement.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal the partial dismissal by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attn: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business December 24, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3-16-76

679

Mr. Paul J. Theriault
1153 East Portage Avenue
Sault Ste. Marie, Michigan 49783

Re: Department of the Air Force
449th Combat Support Group
Kincheloe Air Force Base, Michigan
Case No. 52-6232(CA)

Dear Mr. Theriault:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Sections 19(a)(1) and (2) of the Executive Order, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that a reasonable basis has not been established for the instant complaint and that, consequently, further proceedings in this matter are unwarranted.

Accordingly, and as in my view, the investigation conducted by the Area Office in this matter was proper, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE AIR FORCE,
449TH COMBAT SUPPORT GROUP,
KINCHELOE AIR FORCE BASE, MICHIGAN,

Respondent

and

Case No. 52-6232(CA)

PAUL J. THERIAULT, An Individual,

Complainant

The Complaint in the above-captioned case was filed on July 18, 1975, in the office of the Detroit Area Director. It was thereafter amended, which amendments were filed on August 8, 1975, and October 6, 1975. The amended Complaint alleges violations of Sections 19(a)(1) and (2) of Executive Order 11491, as amended. The Complaint has been investigated and carefully considered. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in this case.

It is alleged that the Respondent violated the Order by suspending the Complainant, a member of Local 32, National Federation of Federal Employees, the Labor Organization that holds exclusive recognition at Kincheloe Air Force Base. The Complainant maintains that the suspension was in retaliation for his having filed grievances and represented other employees in processing their grievances. The Complainant states that the Respondent retaliated in this fashion because its Commander "believed that /the Complainant/ 'got him in trouble with the Union' . . ."

While the Complainant claims to have actively assisted minority employees and FEW (Federally Employed Women) no evidence to support this claim was submitted. Investigation shows that the Complainant accompanied another employee (Dorothy E. Wagner, see below) and allegedly "represented" her in one informal meeting and that numerous grievances were filed by the Complainant, but all on his own behalf. The Complainant, while a member of Local 32, is not an official of the Local and has never "represented" anyone in the capacity of steward or union official. In fact, it appears that Local 32 questioned whether he was purporting to act as an official in any capacity and made it clear that he was not so authorized.

The Respondent moves for dismissal of the Complaint on the grounds that (1) it is barred by Section 19(d) of the Order, (2) the Complaint is inadequate on its face because it uses phrases such as "see attached correspondence", and (3) on the merits of the Section 19(a)(1) and (2) allegations. Section 19(d) provides that issues raised in a grievance procedure cannot be raised by the filing of an unfair labor practice complaint. Here, the Complainant, prior to filing his complaint, did seek to raise the issues by filing a grievance. However, that grievance was "denied" as untimely filed, and he filed the instant Complaint. When a grievance is denied or not accepted and processed on the grounds of timeliness, an unfair labor practice charge may thereafter properly be filed, so long as it fulfills the timeliness requirements of the Assistant Secretary's Regulations. The Charge and Complaint herein were timely filed, and I find no merit in the Respondent's 19(d) argument. See Federal Aviation Administration, Muskegon Air Traffic Control Tower, A/SLMR No. 534. Nor do I find any merit in the Respondent's second ground for dismissal. The attachments referred to by the Complainant on the face of his complaint are arranged in reasonable chronological order, with the basis of the Complaint stated in reasonably clear and concise words, with an index of attachments. To dismiss on those grounds in this case would in my opinion be unjust.

The Respondent admits that Article XII of the negotiated agreement with Local 32, which governs the rights of the Complainant, requires that an employee-grievant will be granted a reasonable amount of time to prepare and present grievances. However, it points also to Air Force Regulation 40-771, which requires that employee-grievants must make advance arrangements with their supervisors for the use of official time to prepare grievances. The Complainant in this case, as has been found above, filed numerous grievances on his own behalf. In December 1974, he was given a letter of reprimand for using official duty time to prepare his grievances without prior arrangements having been made with his supervisor. When this happened again, he was suspended. The Respondent argues that this was the only basis for his suspension, and the Complaint should therefore be dismissed.

I shall dismiss the Complaint. The Complainant was very active in filing grievances on his own behalf. He apparently took much time to do so. He does not complain that he was denied reasonable time for such activity. Nor does he take issue with whether he had failed to clear such time with his supervisor. It is stated that he had so failed, was reprimanded formally and then finally suspended for such failure. While it is clear that the suspension was a result incidental to his activity in filing grievances, to be an unfair labor practice in violation of the Order, it would have to be shown that the suspension was because of union activity. I find that reasonable grounds for such a finding have not been established. The bald assertion that the Commander "believed that /the Complainant/ 'got him in trouble with the Union' . . ." is not enough. In fact there was a dispute about whether the Complainant should

be allowed to refer to himself as "representative of labor at large". That dispute is not before me. I find that nothing submitted by the Complainant in support of the allegations of the Complaint, and nothing obtained during our investigation of the Complaint establishes a reasonable basis for those allegations. 1/

Having considered carefully all the facts and circumstances in this case, including the Charge, the Complaint, and all that is hereinabove set forth, the Complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business December 22, 1975.

Dated at Chicago, Illinois, this 5th day of December, 1975.

R. C. DeMarco

R. C. DeMarco, Assistant Regional Director
United States Department of Labor, LMSA
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

1/ In view of my findings and dismissal I find it unnecessary to pass upon the Respondent's motion to dismiss on the merits.

John Aalto, Vice President
Local R2-10R, FASTA
National Association of Government
Employees
11 Holly Drive West
Sayville, New York 11782

680

Re: Federal Aviation Administration
Eastern Region
Manpower Division
Case No. 30-6128

MAR 7 1976

Dear Mr. Aalto:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case alleging violations of Section 19(a)(5) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, in my view, the obligation to meet and confer under the Executive Order exists only in the context of an exclusive bargaining relationship between an exclusive representative and activity or agency which has accorded exclusive recognition. As the Respondent herein was not a party to the exclusive bargaining relationship with the Complainant, I find that it owed no bargaining obligation to the Complainant. Cf. Federal Aviation Administration, Airways Facilities Sector, San Diego, California, A/SLMR No. 533.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

October 2, 1975

In reply refer to Case No. 30-6128(CA)

John Aalto, Vice President
Local R2-10R, FASTA
National Association of Government Employees
11 Holly Drive West
Sayville, New York 11782

Re: Federal Aviation Administration
Manpower Division
Eastern Region

Dear Mr. Aalto:

The above captioned case alleging violations of Sections 19(a)(5) and (6) of Executive Order 11491, as amended, has been investigated and carefully considered.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this respect, your attention is directed to Section 203.6(e) of the Regulations of the Assistant Secretary wherein it is stated that complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in its complaint.

In your complaint and attachments thereto, you allege that Respondent had failed to observe the terms of your negotiated agreement particularly with respect to the posting of a merit promotion vacancy.

Evidence adduced discloses Complainant holds exclusive recognition for a unit of employees employed by the Airways Facilities Division, Eastern Region, Federal Aviation Administration; however, it does not hold exclusive recognition for any of the employees employed by Respondent. 1/

1/ The Respondent, as specifically set forth in the complaint is, "Manpower Division, Eastern Region, Federal Aviation Administration".

John Aalto, Vice President
Local R2-10R, FASTA/NAGE Case No. 30-6128(CA)

No evidence has been adduced which would form a basis to conclude that the Respondent was under any obligation to bargain with Complainant. In this respect, there is no evidence that Respondent, in fulfilling any obligation it may have had to post nationwide (emphasis underscored) promotion bids, was acting for or on behalf of any activity or agency for which Complainant holds exclusive recognition. In addition, no evidence has been adduced which would indicate that Respondent's actions were motivated by anti-union considerations.

Absent any exclusive bargaining relationship between Complainant and Respondent, there can be no basis for a violation of Section 19(a)(5) and/or 19(a)(6) of the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business October 20, 1975.

Sincerely yours,

Manuel Eber

MANUEL EBER
Acting Assistant Regional Director
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3-17-76

681

Mr. Roy T. Newsom
648 Caduceus Lane
Hurst, Texas 76053

Re: Department of Transportation/FAA,
Fort Worth Air Traffic Control Center,
Euless, Texas
Case No. 63-6050(DR)

Dear Mr. Newsom:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the decertification petition in the above-named case.

In agreement with the Assistant Regional Director, I find that the instant petition filed on August 18, 1975, and amended on August 26, 1975, was untimely as it was barred by an existing negotiated agreement between the Activity and Professional Air Traffic Controllers Organization affiliated with the Marine Engineers Beneficial Association, AFL-CIO, which became effective on July 8, 1975, for a term of two years. In your request for review, you contend that the negotiated agreement involved does not cover the unit sought by the subject petition. In my view, however, the existing negotiated agreement, noted above, constitutes, in effect, a multi-unit agreement which covers the unit for which an election is sought by the subject petition. Accordingly, I find such petition to be barred under Section 202.3(c) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant petition, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

November 26, 1975

Mr. Roy T. Newsom, Controller
648 Caduceus Lane
Hurst, Texas 76053

Certified Mail #201882

Re: TRANSPORTATION/FAA
FT. WORTH AIR ROUTE TRAFFIC
CONTROL CENTER, EULESS, TX/
ROY T. NEWSOM
Case No. 63-6050(DR)

Dear Mr. Newsom:

Your petition in this matter was received in the office of the Dallas Area Administrator on August 18, 1975. An amended petition was received on August 26, 1975, accompanied by a statement of service to all parties.

The currently certified exclusive representative for the employees of the Ft. Worth ARTC Center is the Professional Air Traffic Controller Organization (PATCO), MEBA, AFL-CIO. PATCO was certified as the exclusive representative by the Dallas Area Administrator on December 21, 1973. Per bargaining agreement dated April 4, 1973, the Ft. Worth Center employees were automatically brought under contract coverage.1/ The 1973 contract was renegotiated and a new agreement entered into by PATCO and FAA on July 8, 1975. The new contract continued to provide contract coverage for the Ft. Worth Center employees under Article 3 of said contract.2/

1/Article 3 of the Agreement reads as follows: "Other units in which the union is duly certified as the collective bargaining representative, shall be added to and covered by this agreement, unless agreed to otherwise by the Parties."

2/The incumbent Labor Organization, PATCO, has raised a question of whether the Ft. Worth center unit was a part of the National Certification. Since I have found the petition untimely, I do not find it necessary to rule on this matter.

I have carefully considered all the facts submitted in this proceeding and find that I must dismiss your petition as being untimely filed. Section 202.3(c)(1) of the Assistant Secretary Regulation provides that a petition, to be timely filed, must be filed "not more than ninety (90) days and not less than sixty (60) days prior to the terminal date of an agreement having three (3) years or less from the date it was signed and dated by the activity and the incumbent exclusive representative." Your petition was, therefore, prematurely filed since the instant bargaining agreement is in effect for two years from July 8, 1975.

I am, therefore, dismissing the petition.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the Activity and any other interested party. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business December 11, 1975.

Sincerely,

CULLEN P. KEOUGH
Assistant Regional Director
for Labor-Management Services

cc: Federal Aviation Administration, Department of Transportation
Fort Worth Air Route Traffic Control Center
FAA Road
Euless, Texas 76039 Certified Mail #201878

Mr. Gerald Tuso
PATCO, Ft. Worth Center Local 402
FAA Road
Euless, Texas 76039 Certified Mail #201883

Mr. David Trick, Regional Vice President
PATCO
Suite 509, 1901 Central Drive
Bedford, Texas 76021 Certified Mail #201883

Gordon Ramsey, Esq.
Dickstein, Shapiro and Morin
1735 New York Avenue, N. W.
Washington, D. C. 20006

682

MAR 18 1976

Re: Charleston Naval Shipyard
Charleston, South Carolina
Case No. 40-6651(RO)

Dear Mr. Ramsey:

I have considered carefully your request for review in the above-named case seeking reversal of the Assistant Regional Director's dismissal of the subject petition as untimely.

The investigation revealed that the Activity and the Federal Employees Metal Trades Council, AFL-CIO, (FEMTC) were parties to a three year negotiated agreement which became effective on December 22, 1972, the date on which the agreement was approved by higher Agency management. The signature page of the agreement reveals that the agreement was signed by the FEMTC on December 6, 1972. However, neither the signature page nor any other part of the agreement indicates the date on which the Activity signed the agreement. Consequently, the date of the Activity signing cannot be determined without considering factors outside the agreement. It is the Petitioner's position that, as the agreement is ambiguous with regard to the date it was signed by the Activity, the appropriate date for determining the timeliness of the instant petition should be the date on which the agreement was approved by higher Agency management and became effective, rather than the date it was allegedly signed by the parties at the local level.

Under the particular circumstances of this case, I find, contrary to the Assistant Regional Director, that the appropriate date for determining the timeliness of the subject petition is December 22, 1972, the date on which the agreement was approved by higher Agency management. Thus, in my view, in order for a negotiated agreement to constitute a bar to a representation petition on the basis of its execution date, it must be signed and dated by both parties (see Section 202.3(c) of the Assistant Secretary's Regulations) so that employees and labor organizations can ascertain, without the necessity of relying on factors outside the agreement, the appropriate time for the filing of a representation petition. Cf. Treasury Department, United States Mint, A/SLMR No. 45. And where, as here, a three year agreement has a fixed duration dating from its effective date which can be ascertained from the agreement without considering other factors, it is appropriate to utilize the clear expiration date in order to determine when a petition may be filed. Therefore, and as the subject petition was filed during the 60 to 90 day period proceeding December 22, 1975, I find that it was filed timely within the meaning of Section 202.3(c) of the Assistant Secretary's Regulations.

Accordingly, the case is hereby remanded to the Assistant Regional Director for reinstatement of the petition and further proceedings in accordance with the applicable Regulations of the Assistant Secretary.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

November 20, 1975 ATLANTA, GEORGIA 30309

Mr. Stanley Q. Lyman
National Vice President
National Association of Government Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: Charleston Naval Shipyard
Charleston, South Carolina
Case No. 40-6651(RO)

Dear Mr. Lyman:

This is to inform you that further proceedings with respect to the petition are not warranted.

Investigation discloses that Federal Employees Metal Trades Council of Charleston, AFL-CIO (FEMTC), the incumbent exclusive representative of the employees in the unit sought, and the Activity executed a labor agreement on December 6, 1972. Article XLIV, Section 1 of that agreement provides, in part:

> This Agreement as executed by the parties shall remain in full force and effect for a period of three (3) years from the date of its approval by the Office of Civilian Manpower Management.

The agreement was approved by the Office of Civilian Manpower Management on December 22, 1972 "to be effective 22 December 1972."

The subject petition was filed at the Atlanta Area Office on October 10, 1975.

The Activity takes the position that the petition may be untimely in light of the provisions of Section 202.3 of the regulations of the Assistant Secretary. The FEMTC takes the position that the agreement became effective December 6, 1972 and expires December 6, 1975 and that the petition is untimely under Section 202.3(c) of the regulations of the Assistant Secretary. FEMTC contends that the December 22, 1975 expiration date is incorrect. FEMTC states that December 22, 1972 is the date of approval of the agreement by the Office of Civilian Manpower Management but that approval was retroactive to December 6, 1972.

Section 202.3(c)(1) and (2) of the Regulations reads:

> (c) When an agreement covering a claimed unit has been signed and dated by the activity and the incumbent exclusive representative, a petition for exclusive recognition or other election petition will be considered timely when filed as follows:
>
> (1) Not more than ninety (90) days and not less than sixty (60) days prior to the terminal date of an agreement having a term of three (3) years or less from the date it was signed and dated by the activity and the incumbent exclusive representative; or
>
> (2) Not more than ninety (90) days and not less than sixty (60) days prior to the expiration of the initial three (3) year period of an agreement having a term of more than three (3) years from the date it was signed and dated by the activity and the incumbent exclusive representative; or

Nothing in the agreement provides for retroactivity of the agreement to December 6, 1972. The fact that the agreement requires approval by the Office of Civilian Manpower Management does not justify the conclusion that the agreement is to be retroactive to the date of the signing of the agreement, i.e., December 6, 1972.

The termination or expiration date of the agreement is December 22, 1975. But the issue in the instant case is timeliness of the petition, not the expiration date of the agreement. As the agreement is for a period of more than three (3) years from the date it was signed and executed by the parties, the ninety (90)-sixty (60) day "open" period should be determined by counting back from December 6, 1975. Therefore, for purposes of determining timeliness, the "open" period for filing the petition is on or between September 7, 1975 and October 7, 1975. As your petition, filed on October 10, 1975, was not filed within the "open" period, it is untimely.

I am, therefore, dismissing the petition.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the activity and any other party. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business December 5, 1975.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

cc:

Mr. Alan Whitney
Vice President
National Association of Government Employees
1341 G Street, N. W.
Washington, D. C.

Mr. C. H. Sanders, President
Federal Employees Metal Trades Council of Charleston
114 South Walnut
Summerville, South Carolina 29483

C. S. Davis, Jr., Rear Admiral, USN
Commander, Charleston Naval Shipyard
Naval Base
Charleston, South Carolina 29408

Mr. Elbert C. Newton
Labor Relations Advisor
Southern Field Division
Office of Civilian Manpower Management
Box 88, Naval Air Station
Jacksonville, Florida 32212

Mr. Patrick C. O'Donoghue
1912 Sunderland Place, N. W.
Washington, D. C. 20036

Mr. Gordon Ramsey
Dickstein, Shapiro and Morin
1 Boston Place
Boston, Massachusetts 02108

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-18-76

683

Ms. Janet Cooper, Staff Attorney
National Federation of Federal Employees
1016 16th Street, N.W.
Washington, D.C. 20036

Mr. J. Richard Hall
President, Local 1437
National Federation of Federal Employees
Building 34, Picatinny Arsenal
Dover, New Jersey 07801

Re: Picatinny Arsenal
Department of the Army
Dover, New Jersey
Case No. 32-4193

Dear Ms. Cooper and Mr. Hall:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint alleging a violation of Section 19(a)(1) and (3) of Executive Order 11491, as amended.

In agreement with the Acting Assistant Regional Director, I find that a reasonable basis for the subject complaint has not been established and, that, consequently, further proceedings in this matter are unwarranted. Thus, in my view, the evidence herein does not establish that the labor organizations which were party to the election in Case No. 32-3619(RO) were treated disparately by the Respondent. Rather, the evidence establishes that the administrative leave for union training which was granted by the Respondent to employee representatives of the American Federation of Government Employees, AFL-CIO, (AFGE), was granted to such representatives on the basis of the AFGE's exclusive representative status with respect to its existing units at the Picatinny Arsenal. In my view, while labor organizations which are party to a pending representation proceeding should be treated by agencies and activities in a non-disparate manner during the pendancy of the question concerning representation, this does not mean that, with respect to

other established units for which no questions concerning representation have been raised, incumbent exclusive representatives (such as the AFGE in the subject case) may not be accorded the rights flowing from their exclusively recognized status without according the same rights to the labor organizations involved in the pending representation proceeding which do not hold exclusive recognition.

Accordingly, and noting that there was no contention herein that the AFGE employee representatives involved were included in the petitioned for unit in which a question concerning representation exists, your request for review, seeking reversal of the Acting Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE

Suite 3515
1515 Broadway
New York, New York 10036

JANUARY 7, 1976

In Reply refer to Case No. 32-4193(CA)

J. Richard Hall, President
National Federation of Federal Employees (IND)
Local Union 1437
241 Sixth Avenue
New York, New York 10014

Re: Picatinny Arsenal
Dover, New Jersey

Dear Mr. Hall:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The union alleges that the Respondent-Activity violated Section 19(a)(3) and (1) in that it failed to extend administrative leave to complainant's representatives to attend a union-sponsored training seminar conducted in Stony Brook, Long Island, New York on June 27, 1975. This refusal occurred after the Respondent Activity had granted such excused absence to employees who were representatives of another labor organization, Local 225, American Federation of Government Employees (AFL-CIO), which was the certified bargaining representative for a different unit at the same Activity. The union alleges further that its representatives were entitled to treatment similar to that granted to Local 225, AFGE, because the two (2) unions were contesting a unit of employees at Respondent-Activity and, hence, were in "equivalent" status within the meaning of Section 19(a)(3) of the Order.

The Respondent answers the charge by stating that Administrative Leave is not a "customary and routine service" to which Section 19(a)(3) and Section 23 of the Order refers. Administrative Leave is by its nature granted only in unusual circumstances as prescribed by a Department of Defense directive. It is granted only to a labor organization which holds exclusive recognition and only when its use is of mutual benefit to the union and the Respondent.

Local Union 225, AFGE, the third party to this complaint, answers the charge by concurring in the Respondent's position with regard to the extraordinary nature of the service denied the complainant. It also argues that "equivalent status" as it relates to the equal rendering of "customary and routine services" prescribed by the Order has only been held to apply to the period prior to an election in a unit where a question concerning representation is present.

The evidence submitted discloses that Respondent grants Administrative leave on a very limited basis to Labor Organizations holding exclusive recognition within the Activity. It is dispensed strictly within the guidelines of a Department of Defense Directive. There is no evidence to demonstrate that it is a "customary and routine service" within the meaning of Section 19(a)(3). The evidence also discloses that while the union does not hold an exclusive recognition at the Respondent-Activity, Local 225, AFGE does. The union cannot lay claim to all of the various benefits accorded to a labor organization which is granted exclusive recognition merely because they gain equivalent status within the context of a question concerning representation. They are only entitled to "customary and routine services". To go beyond these services would be to go beyond the intent of Section 19(a)(3). The union supplies no evidence to show that the Department of Defense policy was intended to favor incumbents during unit questions. There is no evidence of any advantage or disadvantage gained. As a matter of fact, Local 225, AFGE, which received the Department of Defense benefit complained of, lost the election in the professional unit, the unit which was being contested.

I must conclude from the foregoing that you have failed to establish a reasonable basis for your complaint.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the other parties.

A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATTN: Office of Federal Labor Management Relations, U.S. Department of Labor, Washington, D.C. 20216 no later than the close of business January 23, 1976.

Sincerely yours,

THOMAS P. GILMARTIN
Acting Regional Administrator
New York Region

Attachment

Sent to the following:

Mr. Joseph Filippone
Civilian Personnel Officer
Picatinny Arsenal
Dover, New Jersey 07801

Ms. Nancy McAleney
President, AFGE Local 225
Building 1610
Picatinny Arsenal
Dover, New Jersey 07801

Colonel Kilbert Lockwood
Commanding Officer
Picatinny Arsenal
Dover, New Jersey 07801

Mr. Irving Geller
General Council, NFFE
1016 16th Street, N.W.
Washington, D.C. 20036

Mr. Thomas Daly
Area Director, LMSA
U.S. Department of Labor
Room 305, 9 Clinton Street
Newark, New Jersey 07102

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-18-76

Mr. Donald R. Prince
Director, National Council of Bureau
of Indian Affairs Educators
P.O. Box 476
Gallup, New Mexico 87301

684

Re: Shonto Boarding School
Shonto, Arizona
Department of the Interior
Bureau of Indian Affairs
Case No. 72-5654(RO)

Dear Mr. Prince:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the petition in the above-named case.

The Assistant Regional Director dismissed the petition on the ground that there is no evidence herein of unusual circumstances which would warrant severance of the claimed employees from an existing exclusively recognized unit. He noted that where no evidence is presented of unusual circumstances to warrant severance, the policy has been established that a petition will be dismissed. In this regard, he cited U.S. Department of Interior, Bureau of Indian Affairs, Fort Apache Agency, Phoenix, Arizona, A/SLMR No. 363.

In your request for review, you contend that A/SLMR No. 363 was wrongly decided and "should be tested." You also claim that the instant petition "should not be considered as carving into another union's territory since no other professional group exists to represent the professional teacher." In agreement with the Assistant Regional Director, and noting particularly that no evidence has been presented of unusual circumstances which would warrant severance, I find that the subject petition was properly dismissed.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the petition, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

December 12, 1975

Mr. Donald R. Prince, Director
National Council of Bureau of
Indian Affairs Educators
P. O. Box 476
Gallup, New Mexico 87301

Re: Interior, BIA, Shonto
Boarding School, Shonto, AZ -
NCBIAE
Case No. 72-5654

Dear Mr. Prince:

This is to inform you that further proceedings with respect to the petition in the subject matter are not warranted. On the basis of the investigation, it has been determined that the claimed unit does not appear to be appropriate inasmuch as your petition seeks to sever a group of employees from an existing unit holding exclusive recognition. In this regard, I direct your attention to U. S. Department of Interior, Bureau of Indian Affairs, Fort Apache Agency, Phoenix, Arizona, A/SLMR No. 363, in which NCBIAE was also the petitioner and sought to sever the 1710 educators from a professional/non-professional unit. The Assistant Secretary found no unusual circumstances to warrant such severance, and he dismissed the petition. In the instant petition, you have not presented evidence of unusual circumstances to warrant severence.

I am, therefore, dismissing the petition.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20210. A copy of the request for review must be served on the undersigned Regional Administrator as well as the activity and any other party. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business December 29, 1975.

Sincerely,

Gordon M. Eyrboldt
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
3-18-76

685

Mr. Mitchell Arkin
Labor Relations Advisor
Labor Disputes and Appeals Section
Office of Civilian Manpower
Management
Department of the Navy
Washington, D.C. 20390

Re: Puget Sound Naval Shipyard
Bremerton, Washington
Case No. 71-3492

Dear Mr. Arkin:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that the grievance herein is on a matter subject to the negotiated grievance procedure. Accordingly, and noting that no statutory appeal procedure exists through which the previously employed grievant could raise the matter covered by the subject grievance, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Relations, Labor-Management Services Administration, U.S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is 9061 Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

DEPARTMENT OF THE NAVY PUGET SOUND NAVAL SHIPYARD BREMERTON, WASHINGTON -ACTIVITY	
-AND-	CASE NO. 71-3492
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL 282, DISTRICT NO. 160 -APPLICANT	

REPORT AND FINDINGS ON AN APPLICATION FOR

DECISION ON GRIEVABILITY

On August 7, 1975, the International Association of Machinists and Aerospace Workers, Local 282, District No. 160, hereinafter referred to as Applicant, filed an Application for Decision on Grievability in accordance with Section 206 of the Regulations of the Assistant Secretary. The undersigned has caused an investigation of the facts to be made and finds as follows:

The Applicant and Department of the Navy, Puget Sound Naval Shipyard, Bremerton, Washington, hereinafter referred to as Activity, are parties to a labor-management agreement effective June 20, 1975, with a termination date of February 15, 1977. The Applicant seeks a decision as to whether its grievance dated June 27, 1975, concerning the termination of employee James Morgan is grievable under the negotiated agreement.

The facts indicate that probationary employee James Morgan was terminated for an alleged misuse of annual and sick leave on or about June 27, 1975. On June 27, 1975, Morgan filed a formal grievance concerning his termination, citing Articles XII & XIII of the negotiated agreement. The Activity denied the grievance on July 16, 1975, on the grounds Morgan's termination was over a matter for which a statutory appeals procedure exists and, therefore, Morgan was precluded from filing a grievance under the negotiated procedure.

On June 26, 1976, Morgan, through counsel, appealed the termination to Employee Appeals Authority, United State Civil Service Commission, Seattle, Washington under Section 315, Subpart G of the Civil Service Regulations which provides in pertinent part:

> Section 315.806 Appeal rights to the Commission. (a) Right of appeal. An employee may appeal to the Commission in writing an agency's decision to terminate him under Section 315.804 or Section 315.805 only as provided in paragraphs (b) and (c) of this section. The Commission's review is confined to the issues stated in paragraphs (b) and (c) of this section.

(b) On discrimination. (1) An employee may appeal under this subparagraph a termination which he alleges was based on discrimination because of race, color, religion, sex, or national origin. The Commission refers the issue of discrimination to the agency for investigation of that issue and a report thereon to the Commission. (2) An employee may appeal under this subparagraph a termination not required by statute which he alleges was based on political reasons or marital status or a termination which he alleges resulted from improper discrimination because of physical handicap.

(c) On improper procedure. A probationer whose termination is subject to Section 315.805 may appeal on the ground that his termination was not effected in accordance with the procedural requirements of that section.

In this appeal, Morgan contended his termination was based upon his marital status and upon improper discrimination because of physical handicap. The appeal was denied July 29, 1975. Thereafter, on August 7, 1975, the Applicant filed an Application for Decision on Grievability.

The negotiated agreement provides in pertinent part:

Article 1, Section 2 - Recognition and Coverage of Agreement

The unit to which this Agreement is applicable is composed of all eligible employees including temporary and probationary employees in the Puget Sound Naval Shipyard . . .

Article III, Section 6 - Rights of employees

The provisions of this Agreement shall be applied fairly and equitably to all employees of the unit.

Article XII - Sick Leave

Article XIII - Annual Leave

Article XXX - Grievance Procedure

Section 1 - This article provides for an orderly and sole procedure for the processing of employee, Employer, and Council grievances as set forth in Executive Order 11491, as amended. Grievances, to be processed under this article, shall pertain only to the interpretation or application of express provisions of this Agreement.

Section 2 - Any employee, or group of employees, in the unit may present such grievances to the Employer and have them adjusted. . .

Section 11 - Matters for which statutory appeals procedures exist shall not be considered under this Article, or Article Thirty-One, Arbitration. . .

Applicant contends that when Articles I, III & XXX are viewed together, it must be concluded that probationary employees have full rights under the negotiated agreement and, moreover, since no statutory appeals procedures exist which allow the grievant to pursue his allegations of contract violations, the question of his termination due to alleged abuse of sick and annual leave shall be resolved through the negotiated grievance procedure.

The Activity asserts that the termination of Morgan is a matter for which statutory appeals procedures exist thereby eliminating Morgan's right to file a grievance under the negotiated grievance procedure. Furthermore, the Activity points out that Morgan did, in fact, file an appeal with the Federal Employee Appeals Authority on June 26, 1975, which was denied on July 29, 1975.

While it is established that an appeal was made by the grievant under a statutory appeals procedure, it is apparent that the jurisdiction of the appellate entity therein is limited to discrimination because of race, color, religion, sex, national origin, partisan political reasons, marital status, or physical handicap. It is also apparent that the thrust of the appeal, which was ultimately denied, was within the parameter of that jurisdiction, and did not extend to the subject matter of the grievance that Applicant seeks to have resolved under the negotiated grievance.

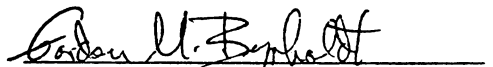
In these circumstances, it is concluded that no statutory appeals procedure exists under which the grievant can appeal the specific allegations raised in his grievance. It is further concluded that the questions of proper usage of sick and annual leave, which are raised in the grievance, involve application of Articles XII and XIII of the negotiated agreement and that the coverage of that agreement as set forth in Article I extends to grievant.

Accordingly, since it is concluded that the grievance is on matters properly covered by the negotiated agreement, the undersigned finds that the grievance is subject to the negotiated grievance and arbitration procedure.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other party. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on December 17, 1975.

LABOR-MANAGEMENT SERVICES ADMINISTRATION



GORDON M. BYRHOLDT
Assistant Regional Director
San Francisco Region
9061 Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: December 2, 1975

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-19-76

686

Mr. John M. Walsh, Attorney
Office of the Chief Counsel
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

Re: Federal Aviation Administration
Washington, D.C.
Case No. 22-6347

Dear Mr. Walsh:

I have considered carefully your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability in the above-named case.

In agreement with the Acting Assistant Regional Director, I find that the instant grievance over the denial of reduced air fare privileges to a unit employee involves the interpretation and application of Article 15, Section 1 of the parties' negotiated agreement which provides, in part, that where applicable laws and regulations permit the union may obtain reduced fares for its members and their immediate families. In my view, the question whether certain Department of Transportation Regulations and regulations of other appropriate authorities permit the instant reduced fares concerns the merits of the grievance rather than its grievability or arbitrability. Moreover, there was no evidence or contention that the parties, in negotiating Article 15, Section 1, did not intend that questions concerning alleged violations of such Article would be subject to the negotiated agreements' grievance and arbitration procedure.

Accordingly, your request for review, seeking reversal of the Acting Assistant Regional Director's Report and Findings on Grievability or Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Assistant Regional Director for Labor-Management Relations, Labor-Management Services Administration, U.S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Assistant Regional Director's address is Room 509, Vanguard Building, P.O. Box 19257, 1111 20th Street, N.W., Washington, D.C. 20036.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

Activity

and

Case No. 22-6347(AP)

PROFESSIONAL AIR TRAFFIC
CONTROLLERS ORGANIZATION

Applicant

REPORT AND FINDINGS

ON

GRIEVABILITY OR ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed the investigation and finds the matter raised by the instant application is grievable and subject to arbitration.

The investigation revealed that the Federal Aviation Administration and the Professional Air Traffic Controllers Organization (PATCO) are parties to a two-year negotiated agreement effective July 8,1975, superseding their previous agreement of April 4, 1973.

The question raised by the Application filed by PATCO is whether a grievance over a denial of a PATCO member to obtain a reduced air fare from Prinair is subject to the negotiated grievance/arbitration procedure between the parties.

The grievance and subject of the application was filed by PATCO on June 11, 1975 and alleged that the FAA violated Article 15, Section 1 of the agreement when it refused to allow Mr. Ron Cherry, a PATCO member and FAA employee, to utilize a reduced air fare offered by Prinair. The grievance filed by the union's Regional Vice President stated (in part):

"It has been brought to my attention that on June 3, 1975, Mr. Ron Cherry, PATCO Facility President of San Juan Center, had been informed that if he exercised his contractual rights of obtaining a reduced air fare as a PATCO member, as provided for in Art. 15, Sect. 1, with Prinair that he would be subjected to disciplinary actions of up to dismissal from the Federal Aviation Administration. ...You have violated Art. 15, Sect. 1 of the PATCO/FAA agreement by arbitrarily and capriciously establishing a policy that PATCO members cannot utilize reduce air fares being offered them."

The following are relevant portions of the negotiated agreement between the parties identical in both agreements of April 4, 1973 extended to the new agreement of July 8, 1975.

"Article 7 - Disputes Settlement Procedure

Section 1 - This Article provides the procedure for the timely consideration of grievances over the interpretation or application of this agreement. This procedure does not cover any other matters for which statutory appeals procedures exist and shall be the exclusive procedure available...for resolving grievances over the interpretation or application of this agreement..."

"Article 15 - Reduced Air Fares

Section 1 - Where applicable law and regulations permit, the Employer acknowledges that the Union may enter into agreement with any individual commercial passenger airline, whether international, domestic, interstate, or intrastate, to obtain reduced or free fares for its members and their immediate families. This also applies to any designated air taxi governed by local, state or federal regulations."

"Article 42 - Employer-Employee Union Rights

Section 1 - In the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities..."

"Article 54 - Effect of Agreement

Section 1 - Any provision of this agreement shall be determined a valid exception to and shall supersede any existing FAA rules, regulations, orders and practices which are in conflict with the agreement."

In its response to both the grievance and the application the FAA appears to argue the merits of the grievance by citing "applicable law and regulation" which allegedly prohibits reduced air fares offered by Prinair to PATCO members and FAA employees. By its reply of July 1, 1975, the FAA Regional Director stated that "...Article 15, Section 1 has not been violated because by its own terms it is subject to applicable law and regulations." He then cited Department of Transportion Regulations Part 99.735-9(a) covering conflict of interest and concluded that "The previously cited DOT Regulations do not permit the type of agreement you have with Prinair." The activity's final decision on the grievance again interpreted Article 15 as denying such reduced air fare agreements when on July 10, 1975, the Director of Labor Relations determined that "By the provisions of Article 15 of the 1973 PATCO/FAA agreement,...applicable laws and regulations especially prohibit such an agreement." In support he stated "This determination is based on Section 201(a), Executive Order 11222, Part 735.202 of the Regulations of the Civil Service Commission and Part 99.735-9(a) of the Department of Transportation Regulations."

Counsel for FAA in reply to the instant Application also argues that such regulations "...are applicable to PATCO's attempt to secure reduced air fares for its members who are FAA employees..." and further cites DOT's General Counsel opinion of September 12, 1973 regarding an employee's acceptance of free air fare from Southwest Airlines.

Article 15, Section 1 cites "applicable law and regulations" as it refers to reduced air fares.

It is apparent that the foregoing arguments presented by the activity run to the merits of the grievance and are attempts to establish "applicable law and regulations" under Article 15, Section 1 of the negotiated agreement between the parties. The Assistant Secretary has ruled that he is restricted from delving into the merits of a grievance in determining grievability/arbitrability issues. Any finding by the Assistant Secretary as to what constitutes "applicable law and regulations" as specifically applied to the subject grievance would be an interpretation of Article 15 of the agreement - a matter rightfully reserved for an arbitrator in resolving the grievance.

Although not raised by the parties, the contract provides additional evidence for grievability of questions concerning "applicable regulations" in Article 54 which states that,

> "Any provision of this agreement shall be determined a valid exception to...any existing FAA rules, regulations...which are in conflict with the agreement."

In this regard the present disagreement between the parties could also concern an interpretation of Article 54 as to whether FAA regulations allegedly denying reduced air fares are in fact inoperative per Article 54.

However, since PATCO contends that Article 15 of the agreement permits its members to accept reduced air fares and the activity argues that such arrangements are prohibited under Article 15, this matter concerns the interpretation and application of the agreement between the parties which provides for such resolution through Article 7 of the negotiated grievance procedure.

I find, therefore, that the matter raised by the instant application is grievable and arbitrable under the parties' negotiated agreement.

In view of the foregoing, it is unnecessary to rule, per PATCO's request, whether the instant application falls under the parties' new agreement of July 8, 1975.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216, not later than the close of business December 16, 1975.

Dated: December 1, 1975

Joseph A. Senge, Acting Assistant Regional Director for Labor-Management Services

Attachment: Service Sheet

Mr. Robert E. Edwards
Associate General Counsel
Chief, Labor Relations Branch
Departments of the Army and the
Air Force
Headquarters, Army and Air Force
Exchange Service
Dallas, Texas 75222

687

MAR 18 1976

Re: Army and Air Force Exchange
Service
Fort Sam Houston, Texas
Case No. 63-5658(GA)

Dear Mr. Edwards:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability, in the above-named case.

In agreement with the Assistant Regional Director, I find that the issues raised in the instant grievance are grievable and arbitrable under the provisions of the parties' negotiated grievance and arbitration procedure. It is your contention that the provision contained in Section 1, Article XX of the agreement entitled, Promotions, Downgrades, and Details, which reads, "Employees are selected for promotion on the basis of performance, potential, length of AAFES service and veterans status, in that order of importance," is an Army and Air Force Exchange Service (AAFES) Regulation and, thus, issues involving the application and interpretation of such provision are excluded from the negotiated grievance and arbitration procedure. You further contend that the sole allegation in the instant grievance is that the grievant was better qualified for a promotion than the individual selected and such an issue may not be raised under the negotiated procedure.

Regarding your first contention, while the language of the subject provision is identical to the language which appears in an AAFES Regulation, there is no indication in the agreement that such provision was intended to constitute the AAFES Regulation and thereby exclude the matter from the coverage of the negotiated grievance and arbitration procedure. In addition, there is nothing in the agreement which distinguishes the above-noted provision from any other grievable and arbitrable provision in the agreement. Moreover, it was noted that no evidence was presented to support your contention that at the time the parties negotiated the agreement they considered the instant provision to be an AAFES Regulation. Similarly, no evidence was presented to show that the parties intended such provision to be excluded from coverage of the negotiated grievance and arbitration procedure.

I conclude also, in agreement with the Assistant Regional Director, that the issue raised in the grievance is not restricted to whether the grievant was better qualified for promotion than the individual selected. Rather, it appears that the substance of the grievance herein concerns whether the Activity applied the correct criteria in making its selection.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Grievability, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEFENSE/ARMY,
ARMY-AIR FORCE EXCHANGE SERVICE,
ALAMO EXCHANGE REGION,
FORT SAM HOUSTON, TEXAS,

Respondent,

and

Case No. 63-5658(GA)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL UNION 2911, AFL-CIO,

Applicant

REPORT AND FINDINGS
ON
GRIEVABILITY

Upon an Application for Decision on Grievability duly filed under Section 6 (a)(5) of Executive Order 11491, as amended, and Part 205 of the Rules and Regulations of the Assistant Secretary, an investigation of the matter has been conducted by the Area Director.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

A timely application was filed by Applicant on May 30, 1975, with the Dallas Area Office. In a written grievance dated February 14, 1975, filed by Applicant on behalf of Mr. Roland T. Jasso, a unit employee, it is alleged that:

> "After informal investigation into the matter as to why Mr. Jasso was not selected for promotion to ALER Position Vacancy No. 5-75 Data Control Clerk, it was discovered that a violation of the criterion for promotion as agreed in Article XX of the Collective Bargaining Agreement ... had occurred."

The Applicant contends that a Mr. Guzman was slected for promotion solely on the basis of potential and that the selection was thus contrary to Section 1 of Article XX, Promotion, Downgrades and Details, which reads as follows:

> "Employees are selected for promotion on the basis of performance, potential, length of AAFES service, and veteran status, in that order of importance...."

The Activity contends that the matter is not grievable, i.e., subject to Article XXXV, Grievance Procedure, for two reasons: First, that in reality the grievance is concerned with nonselection for promotion which is excluded from the grievance procedure as Item No. 23 listed under Section 3 of that article. Item No. 23 reads as follows:

> "Nonselection for promotion where grievant's sole allegation is that he is better qualified than the person selected."

Secondly, that Section 1 of Article XX is in effect an agency regulation because the language was lifted verbatim Army-Air Force Exchange Service Regulation AR 60-21/AFR 147-15 and as a regulation is subject to a request for review. Matters which are properly subject to a request for review are specifically excluded from being subject to the contractual grievance procedure by Item No. 20 listed under Section 3 of Article XXXV, Grievance Procedure.

As to the Activity's first contention, it is my finding that the grievance was not filed by Mr. Jasso but by the union on his behalf. Further, even if Mr. Jasso should be considered as the grievant, it is clear that the grievance is not based solely on his allegation that he is better qualified than the person selected. The substance of the grievance is the allegation that the selection was based solely on the selection potential and that the application of such selection criteria was violative of Section 1 of Article XX, Promotions, Downgrades and Details.

As to the Activity's second contention, it is my finding that Article XX, Promotions, Downgrades and Details, is in fact a part of the agreement between the acticity and the union; it is not an agency regulation; and it is subject to the grievance and arbitration procedure contained in the agreement.

Based on all the foregoing, I conclude that his matter concerns interpretation and application of contractual provision and is therefore subject to the grievance procedure Article XXXV including Step 7, Arbitration. Parties are hereby directed to process the grievance in accord with that procedure.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business on November 28, 1975.

Labor-Management Services Administration

John C. Jackson, Acting Assistant Regional Director for Labor-Management Services

Dated: November 12, 1975

3-19-76

688

Mr. Carmine V. Rivera
Assistant to the Director
Teamsters Public Employees Union
Local 911
846 South Union Avenue
Los Angeles, California 90017

Re: U.S. Marine Corps
Marine Corps Supply Center
Barstow, California
Case No. 72-5356(CA)

Dear Mr. Rivera:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a)(1), (2), (3), (5), and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted. In this regard, the evidence indicates that no question concerning representation existed either at the time the agreement at issue was being renegotiated or when the Complainant requested permission to conduct a membership drive on the Activity's premises. Moreover, no evidence was submitted to demonstrate that the Activity's employees were not reasonably accessible to communication by the Complainant. Thus, under these circumstances, I find that the Activity was not obligated to furnish the Complainant with the use of its facilities to conduct a membership drive. Cf. Department of the Army, U.S. Army Natick Laboratories, A/SLMR No. 203.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

November 24, 1975

Mr. Carmine V. Rivera
Assistant to the Director
Teamsters Public Employees
Union, Local 986
846 S. Union Avenue
Los Angeles, CA 90017

Re: Marine Corps Supply Center -
Teamsters Public Employees
Union, Local 986
Case No. 72-5356

Dear Mr. Rivera:

The above captioned case alleging a violation of Executive Order 11491, as amended, has been considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, it is noted there is no evidence that the premature extension of the agreement was in response to organizing efforts by Complainant. Moreover, no evidence was submitted with regard to allegations of independent 19(a)(1) as well as 19(a)(2),(5) and (6) of the Order. In these circumstances, and since there was no question concerning representation at the time the agreement was renegotiated, it is concluded there is no reasonable basis for an allegation that Respondent's conduct was violative of the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on October 30, 1975.

Sincerely,

Gordon M. Byrholdt
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-19-76

689

Ms. Janet Cooper, Staff Attorney
National Federation of Federal
Employees
1016 16th Street, N.W.
Washington, D.C. 20036

Mr. J. Richard Hall
President, Local 1437
National Federation of Federal
Employees
Building 34, Picatinny Arsenal
Dover, New Jersey 07801

Re: Picatinny Arsenal
Department of the Army
Dover, New Jersey
Case No. 32-4181

Dear Ms. Cooper and Mr. Hall:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint alleging a violation of Section 19(a)(1) and (3) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, I find that a reasonable basis for the subject complaint has not been established and, that, consequently, further proceedings in this matter are unwarranted. Thus, in my view, the evidence herein does not establish that the labor organizations which were party to the election in Case No. 32-3619(RO) were treated disparately by the Respondent. Rather, the evidence establishes that the administrative leave for union training which was granted by the Respondent to employee representatives of the American Federation of Government Employees, AFL-CIO (AFGE), was granted to such representatives on the basis of the AFGE's exclusive representative status with respect to its existing units at the Picatinny Arsenal. In my view, while labor organizations which are party to a pending representation proceeding should be treated by agencies and activities in a nondisparate manner during the pendancy of the question concerning representation, this does not mean that, with respect to other established units for which no questions concerning representation have been raised, incumbent exclusive representatives (such as the AFGE in the subject case) may not be accorded the rights flowing from their exclusively recognized status without according the same rights to the labor organizations involved in the pending representation proceeding which do not hold exclusive recognition.

Accordingly, and noting that there was no contention herein that the AFGE employee representatives involved were included in the petitioned for unit in which a question concerning representation exists, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York - 10036

NOVEMBER 25, 1975 In Reply refer to Case No. 32-4181(CA)

J. Richard Hall, President
National Federation of Federal Employees (IND)
Local Union 1437
241 Sixth Avenue
New York, New York 10014

Re: Picatinny Arsenal
Dover, New Jersey

Dear Mr. Hall:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The union alleges that the Respondent-Activity violated Section 19(a)(3) and (1) in that it failed to extend administrative leave to complainant's representatives to attend a union-sponsored training seminar conducted in East Orange, New Jersey on May 16, 1975. This refusal occurred after the Respondent Activity had granted such excused absence to employees who were representatives of another labor organization, Local 225, American Federation of Government Employees (AFL-CIO), which was the certified bargaining representative for a different unit at the same Activity. The union alleges further that its representatives were entitled to treatment similar to that granted to Local 225, AFGE, because the two (2) unions were contesting a unit of employees at Respondent-Activity and, hence, were in "equivalent" status within the meaning of Section 19(a)(3) of the Order.

The Respondent answers the charge by stating that Administrative Leave is not a "custumary and routine service" to which Section 19(a)(3) and Section 23 of the Order refers. Administrative Leave is by its nature granted

only in unusual circumstances as prescribed by a Department of Defense directive. It is granted only to a labor organization which holds exclusive recognition and only when its use is of mutual benefit to the union and the Respondent.

Local Union 225, AFGE, the third party to this complaint, answers the charge by concurring in the Respondent's position with regard to the extraordinary nature of the service denied the complainant. It also argues that "equivalent status" as it relates to the equal rendering of "customary and routine services" prescribed by the Order has only been held to apply to the period prior to an election in a unit where a question concerning representation is present.

The evidence submitted discloses that Respondent grants Administrative Leave on a very limited basis to Labor Organizations holding exclusive recognition within the Activity. It is dispensed strictly within the guidelines of a Department of Defense Directive. There is no evidence to demonstrate that it is a "customary and routine service" within the meaning of Section 19(a)(3). The evidence also discloses that while the union does not hold an exclusive recognition at the Respondent-Activity, Local 225, AFGE does. The union cannot lay claim to all of the various benefits accorded to a labor organization which is granted exclusive recognition merely because they gain equivalent status within the context of a question concerning representation. They are only entitled to "customary and routine services". To go beyond these services would be to go beyond the intent of Section 19(a)(3). The union supplies no evidence to show that the Department of Defense policy was intended to favor incumbents during unit questions. There is no evidence of any advantage or disadvantage gained. As a matter of fact, Local 225, AFGE, which received the Department of Defense benefit complained of, lost the election in the professional unit, the unit which was being contested.

I must conclude from the foregoing that you have failed to establish a reasonable basis for your complaint.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other parties.

A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATTN: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, no later than the close of business December 11, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

CC: Joseph Filippone, Civilian Personnel Officer
Picatinny Arsenal
Dover, New Jersey 07801

G. Nancy McAleney, President
AFGE Local 225
Building 1610
Picatinny Arsenal
Dover, New Jersey 07801

Colonel Kilbert E. Lockwood
Commander
Picatinny Arsenal
Dover, New Jersey 07801

Irving Geller, General Counsel
NFFE
1737 H Street, N.W.
Washington, D.C. 20006

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-19-76

690

Mr. H. L. Erdwin
National Representative, AFGE
Local 2440, AFL-CIO
300 Main Street
Orange, New Jersey 07050

Re: Veterans Administration Hospital
Montrose, New York
Case No. 30-5611(RO)

Dear Mr. Erdwin:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's Report and Findings on Objections in the above case.

In agreement with the Assistant Regional Director, I find that the objections in this matter are without merit. Thus, in my view, the evidence presented in support of the objections does not constitute a basis for setting the election aside. Regarding the first objection, it was noted that no evidence was presented to indicate that the National Federation of Federal Employees, Local 1119 (NFFE), the incumbent intervenor in the instant proceedings, used its office telephone for campaign purposes or that the Activity had any knowledge of such use. As to the second objection, in agreeing with the Assistant Regional Director's reasoning in his disposition, it was noted additionally that the allegation concerning the Activity's obligation to remove certain leaflets from its bulletin boards based on its regulations was raised for the first time in the request for review and, consequently, cannot be considered by the Assistant Secretary (see Report on a Ruling of the Assistant Secretary, No. 46 (copy enclosed)). With regard to the third objection, while under the circumstances herein I consider it unnecessary to make a finding as to whether the Activity violated the parties' side agreement on campaign ground rules, (see Report on a Decision of the Assistant Secretary, No. 20 (copy enclosed)), I conclude, in agreement with the Assistant Regional Director, and based on his reasoning, that the Activity's conduct in granting the NFFE permission to sponsor the Easter Egg Hunt does not warrant setting the instant election aside.

With respect to the fifth objection, under the circumstances, I find it unnecessary to decide whether the statements in the NFFE's leaflets concerning a "free" insurance policy and an alleged AFL-CIO strike fund constituted gross misrepresentations of material facts inasmuch as the evidence established that the Petitioner was aware of the leaflets' contents at least as early as March 28, 1975, and, thus, had adequate time to respond to the leaflets prior to the election. Finally, I conclude, in agreement with the Assistant Regional Director, that the additional objection, concerning a letter by the NFFE to its members offering to pay five dollars for each SF-1187 solicited by the member, was filed untimely pursuant to Section 202.20(b) of the Assistant Secretary's Regulations and, therefore, cannot be considered.

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachments

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Veterans Administration Hospital Montrose, New York Activity and American Federation of Government Employees, AFL-CIO Local 2440 Petitioner and National Federation of Federal Employees, Local 1119 Intervenor	CASE NO. 30-5611(RO)

REPORT AND FINDINGS
ON
OBJECTIONS

Pursuant to a Decision and Direction of Election issued by the Assistant Secretary on February 4, 1975, an election by secret ballot was conducted under the supervision of the Area Director, New York, New York on April 1 and April 3, 1975.

The results of the election as set forth in the Tally of Ballots, are as follows:

TALLY OF BALLOTS FOR PROFESSIONAL EMPLOYEES

Approximate number of eligible voters	240
Void ballots	2
Votes cast for inclusion in the non-professional unit	74
Votes cast for a separate professional unit	38
Valid votes counted	112
Challenged ballots	9
Valid votes counted plus challenged ballots	121

Challenges are sufficient in number to affect the results of the election? NO

A majority of valid votes counted plus challenged ballots has been cast for inclusion in the non-professional unit.

TALLY OF BALLOTS

Approximate number of eligible voters	860
Void ballots	2
Votes cast for AFGE Local 2440, AFL-CIO	151
Votes cast for NFFE Local 1119	319
Votes cast against exclusive recognition	16
Valid votes counted	486
Challenged ballots	17
Valid votes counted plus challenged ballots	503

Challenges are sufficient in number to affect the results of the election? NO

A majority of the valid votes counted plus challenged ballots has been cast for NFFE Local 1119.

Timely objections to conduct which may have affected the results of the election were filed on April 8, 1975 by the Intervenor. The objections are attached hereto as APPENDIX A.

In accordance with Section 202.20 of the Regulations of the Assistant Secretary, the Area Director has investigated the objections. Set forth below are the positions of the parties, the essential facts as disclosed by the investigation and my findings and conclusions with respect to each of the objections involved herein:

THE OBJECTIONS

Objection No. I (See Petitioner's Objection A(1))

"Management did not provide an internal telephone for AFGE, as was provided to NFFE Local 1119. Despite repeated oral requests and a timely written request. Thereby placing AFGE Local 2440 in a disadvantageous position during the election campaign period by hampering communications. During the campaign period the NFFE Local 1119 was able to man the Hospital-granted internal telephone continuously in the office provided the NFFE. After further repeated requests we were advised on March 21, 1975, that the telephone would be installed in five (5) days. As of April 3, 1975 the final day for voting, the telephone was not installed."

According to the Intervenor, Petitioner did use a government phone for internal affairs and was "in no way handicapped".

Activity does not take any position as to whether or not the objection has merit.

Intervenor, the incumbent exclusive representative, had made a request for installation of a telephone in its office on February 8, 1974 and the

telephone was installed on April 26, 1974, prior to the filing of the petition in this case.[1/]

On February 19, 1975, Petitioner submitted a written request for installation of a telephone in its office located in building 14 and the request was approved (although Petitioner contends that repeated oral requests had been made prior to the written request, Petitioner has submitted no details or evidence to substantiate such requests). Subsequent to the written request, Petitioner's President had several discussions with the Activity concerning the installation of the telephone; however, the telephone was not installed until May 2, 1975, almost one month after the election.[2/]

According to the Activity, the installation was delayed for two reasons; (1) there was no vacant trunk live available on the switchboard when the request was approved, and (2) when an extension became available in March, the telephone company could not attend to the installation until May 2, 1975. Petitioner was offerred the use of a telephone located in the day room of building 14 and according to Petitioner's President, the telephone was used for one day prior to the election, however, it was unsatisfactory because of a lack of privacy and numerous extensions which created confusion.

There is no dispute that Petitioner and Intervenor were in equivalent status and entitled to equal treatment with respect to the Activity's services and facilities; however, the objection does not involve a situation in which the Activity granted one labor organization the use of its facility or services in conjunction with its campaign while at the same time denying it to the other. Intervenor had access to its telephone prior to the filing of the petition.[3/]

There is no evidence that the Activity deliberately delayed the installation of Petitioner's telephone, rather, the delay was due to fortuitous circumstances.

1/ In the Activity's response to the objections the date of the request was shown as February 25, 1974; however, an examination of Activity records disclosed that the written request was actually made on February 8, 1974.

2/ Petitioner contends that the Activity promised to install the telephone prior to the election.

3/ Although Intervenor's telephone was installed in 1974, the length of time elapsing between its request and the installation exceeded the same period involved in providing telephone service to Petitioner by five days.

Based upon the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 1 is found to have no merit.

Objection No. 2 (See Petitioner's objections A(2) and B(2)(#3))

These allegations will be considered together because both involve the same campaign material. Objection A(2) reads as follows:

"By letter dated March 20, 1975 (attached) we forwarded to Management a cover letter with copy of a letter also dated March 20, 1975 addressed to Mr. Robert Little, President of NFFE Local 1119, requesting that management take appropriate action to have this derogatory, untruthful and libelous material removed from the Hospital approved Bulletin Boards assigned to NFFE Local 1119. As of April 3, 1975, this material was still on the Bulletin Boards and no reply was received by us to our complaint. This material (attached) was also distributed to all Hospital employees on March 28, 1975 by the NFFE representatives. We did not attempt to reply specifically to each untruthful and derogatory remark because to do so would only have had a further detrimental effect to AFGE and Local 2440."

Objection B(2)(#3) reads as follows:

"Yellow Sheet - As referred to in para. A-2 contains statements that are libelous and deliberately misrepresentative of the facts."

In essence, Objection A(2) constitutes an allegation that the Activity failed to remove Intervenor's derogatory and untruthful campaign leaflet from the latter's bulletin board although requested to do so by letter dated March 20, 1975. Objection B(2)(3) is an allegation that the campaign leaflet - or "Yellow Sheet" - posted by Intervenor contains material misrepresentations of facts. The leaflet in issue is entitled NFFE - FIFTY YEARS OF UNION DEMOCRACY and bears the sub-title of The Sorry Saga of AFGE or --- "Duck, Charley, Here Comes the Axe!". The statements which the Petitioner finds to be derogatory, libelous and material misrepresentations are these:

(1) The paragraph at the top of the leaflet which asks whether the reader would "join a union that lowered the boom on its lodge presidents if they didn't knuckle under the national headquarters policy line?".
(2) The first paragraph on the reverse side which implies through a question that AFGE abuses its lodges, officers and members.

(3) The statement that NFFE was instrumental in obtaining up to 68 cents per hour in wage increases for radio engineers at the Voice of America in Washington, D.C.
(4) The next paragraph which states that NFFE Local 1550 at Bayonne, N.J. has "dozens of former AFGE members". (Petitioner claims that AFGE has exclusive recognition at the Bayonne, N.J. activity "except for a small group in the Post Engineers".)
(5) The following paragraph in which it is claimed that "AFGE tried a 'smear' campaign against the president of NFFE Local 1154, in East Orange, N.J.".
(6) The statement in the last paragraph that the firefighters at the VA Hospital in Northport, Long Island "voted 9 to 1 to get out from under the AFGE cloud" and are now in a separate unit represented by NFFE Local 387. (Petitioner states that AFGE is the exclusive bargaining agent for the non-professional employees but never represented the firefighters.)
(7) The first statement under the sub-title that the president of the AFGE lodge at Fort Bliss, Texas was removed from office because he "didn't keep quiet" about the AFGE's failure to give needed assistance to the lodge.
(8) The subsequent statement regarding the suspension of an AFGE lodge vice president who "complained about the Lodge's mishandling of insurance money and the 'sweetheart' arrangement between AFGE and the District of Columbia Government".
(9) The assertion that the president of the AFGE lodge at Fort Monmouth, N.J. was removed from office because he "happened to hold some views that were different from those at national headquarters".
(10) The following paragraph which declares that "an AFGE Lodge officer or member who dares run against a national officer in an election does so at the risk of being zapped right out of the union".
(11) The subsequent paragraph regarding the representations that the presidents of AFGE lodges at the Andrews Air Force Base and Picatinny Arsenal were removed from office because they actively participated in elections for national officers.

Evidence discloses that Petitioner first objected to the contents of the leaflet on March 20, 1975 when it requested the Activity to remove the leaflet from its bulletin boards. According to the Activity, the letter was received on March 24, 1975 and the leaflets were removed on March 25, 1975. According to the Intervenor, the leaflets were removed on or before March 25, 1975. Petitioner contends that the leaflet remained on the bulletin boards until April 3, 1975.

I find it unnecessary to resolve this conflict since the evidence shows that Petitioner did communicate with the voters and had ample time to reply to the disputed leaflet. As such, the Activity's conduct, even if it failed to remove the leaflets from its bulletin boards, would not warrant the setting aside of the election.4/

While misrepresentations prior to an election are not to be condoned, all false or misleading statements are not deemed sufficient to set aside an election. Where there is a gross misrepresentation or other campaign trickery, it must have occurred at a time when an effective reply cannot be made and must be deemed to have a significant impact upon the election.5/

I find it unnecessary to rule on the gross or deceptive nature of the leaflet since I find that Petitioner had ample time to effectively reply to its contents, having known of its existence as early as March 20, 1975.

In this respect, I make no findings as to whether the contents of the leaflet were "libelous" or whether the Activity's restriction on the use of the bulletin board for such campaigning was justified.

Based upon the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 2 is found to have no merit.

Objection No. 3 (See Petitioner's objection A(3)

"The Director violated Item 8 of its (sic) own Memorandum of Understanding regarding pre-election privileges granted both Unions in a manner detrimental to AFGE and providing special favorable treatment to NFFE sponsored Egg Hunt, traditionally conducted by the Employee Association, without consultation with AFGE Local 2440 as stated in Item 8 of the Memorandum of Understanding or giving AFGE or Local 2440 UBCU (currently exclusively recognized by Hospital for Wage Grade Employees) the opportunity to co-sponsor this Egg Hunt. The three days of publicity given to NFFE in the official Hospital Daily Bulletin during this campaign period regarding the Egg Hunt, our letter of March 25, 1975 to the Director and his reply of March 27, 1975

4/ Federal Aviation Administration, New York Air Route Traffic Control Center, A/SLMR No. 184.

5/ Army Material Command, Army Tank Automotive Command, Warren, Michigan, A/SLMR No. 56.

(all documents referred to attached) are further proof that management gave preferential treatment to NFFE Local 1119 during the pre-election campaign period."

It is undisputed that for the 15 years prior to 1975, the Employees Association, which functions as a non-union organization for the benefit of the Activity's employees, had conducted an annual event known as the Easter Egg Hunt for children of Activity employees. In some way, Intervenor's President learned that the Association had voted to dispense with the traditional event apparently for financial reasons, and on March 20, 1975, he addressed a memorandum to Massaro advising him that his Union "would like" to sponsor the Egg Hunt and to use the Hospital's beach area, or the Social Hall (in case of inclement weather), on March 29, 1975 for that purpose.

In a letter dated March 25, 1975, Massaro granted the request for the use of the facility and reminded Intervenor of understanding that the event would not be used for election campaign purposes.

Also, on March 25, 1975, Petitioner addressed a memorandum to the Activity's Director, protesting the fact that the Intervenor was being permitted to sponsor the traditional Easter Egg Hunt on March 29, 1975. They informed him they had learned about this turn of events through a notice which had been posted behind one of Intervenor's campaign tables and that the notice stated that NFFE Local 1119 had been given permission to sponsor the event because the Employees Association was unable to conduct it as usual.

Petitioner's representatives pointed out to Heard that the egg hunt was "a matter of general welfare" for all the employees and asserted that if it had been given notice of the situation, it would have had an opportunity to participate. They added that the parties' agreement on ground rules for election campaigning provided for consultation among all of them in the event there was a request for additional services or facilities and that the Activity had not acted in good faith when it failed to give Petitioner timely and proper notice that the Employees Association had decided not to sponsor the event.

Petitioner's representative then charged the Activity with unfair labor practices and violations of Sections 19(a)(1), (2), (3), (5) and (6) of Executive Order 11491. The remedy requested was that the Employees Association conduct the Easter Egg Hunt with or without the Activity's assistance so that neither Union would be able to gain an advantage in election campaigning.

On March 26, 1975, the Activity issued its periodical entitled DAILY BULLETIN and incorporated the following announcement under the heading of UNOFFICIAL:

NFFE Sponsored Easter Egg Hunt for children of All employees, Saturday, March 29th, 1975, 11:00A.M., at the Beach area, or in the Social Hall, Building 25, if weather is inclement.

The March 27th "Daily Bulletin" carried the same announcement on the bottom of its first page; the second page repeated the unit definitions and the procedure for self-determination in the professional unit as set forth in the official Notice of Election, and the third page covered more election details and instructions for the voters.

Also, on March 27th, the Activity wrote to Petitioner stating it could understand Petitioner's concern regarding the timing of Intervenor's request in relation to the election, but that management was required to continue "its normal relationships with an exclusively recognized organization". The Activity noted that Intervenor had agreed not to use the egg hunt for campaign purposes and that the Activity in its March 25th response to the Intervenor had cautioned it not to connect the event with its election campaign. Additionally, he assured Petitioner's representatives that management would police the event to make certain that the Intervenor adhered to that condition. The Activity closed the letter with the contentions that the Activity (1) did not influence the Employees Association's decision to discontinue its annual Easter Egg Hunt, (2) did not initiate Intervenor's sponsorship of the event but only responded to the Union's request and would have approved a similar request by the Petitioner, and (3) was ready to respond to any such requests by the Petitioner "both prior to and following the election". The Activity's March 28th "Daily Bulletin" repeated the announcement about the Easter Egg Hunt at the foot of the first page and in the next two pages, also incorporated the same information regarding the unit definitions, the self-determination procedure for the professional employees and the election details.

On the next day, Intervenor conducted the egg hunt, which was open to all employees and their children, in the Activity's beach area. According to Intervenor, NFFE Local 1119 never before used this facility to conduct similar affairs nor sought official sanction to do so in the past. In any event, there is no evidence that the Intervenor campaigned during the egg hunt, which ran for at least an hour.

Paragraph 8 of the parties' Memorandum of Understanding, which constitutes their agreement on campaign rules, reads as follows:

> 8. Requests for additional privileges should be made in writing to the Chief, Personnel Service who will consult all concerned parties prior to decision.

From the foregoing recitation of facts, it is obvious that the Activity violated this rule when it granted Intervenor permission to hold the traditional Easter Egg Hunt in its recreation area without consultation with Petitioner's representatives. However, the Assistant Secretary will not police the parties' side agreements on election campaigning nor any breach of such an agreement unless there is evidence that the transgression had an improper effect on the conduct of the election.6/

6/ Assistant Secretary Report No. 20.

There is no dispute that the Petitioner and the Intervenor were in equivalent status and entitled to equal treatment with respect to the Activity's services and facilities. Intervenor was granted use of the facilities on March 25, 1975 and Petitioner, although aware of the situation made no request to use the facilities for a similar or other purpose.

Petitioner does not contend nor do I find any evidence that the Activity proposed that Intervenor sponsor the easter egg hunt. There is no evidence that Intervenor campaigned during the event.

While the Activity may have breached the side agreement entered into by the parties, I conclude that its actions were not sufficient so as to constitute improper conduct affecting the results of the election. Accordingly, Objection No. 3 is found to have no merit.

Objection No. 4 (See Petitioner's objection B(1))

> "In violation of the pre-election Memorandum of Understanding and NFFE National Representative, Mr. Keith Livermore spent the entire night from March 20, 1975 thru 6:45A.M. on March 21, 1975 going through the Wards (a working area) during working hours (letter attached)."

In support of this allegation, Petitioner contends that Livermore, who was on leave without pay from his regular employment as a nursing aide, was working full time as a National Representative for Intervenor and in that capacity, could gain access to working areas under the pretext of processing grievances. While Petitioner claims that Livermore was present "on the wards" as alleged, he admits that he is unable to report the nature of his conversations with employees. It is his opinion that supervisors observed Livermore while making their rounds. Livermore denies that he ever entered a ward or working area and asserts that he spent every evening and night at home.

The Activity states that it has not received confirmation of Petitioner's allegation from any source. It adds that its issues of the Daily Bulletin, dated March 20, 21 and 24, 1975 contained a notice to supervisors that they were required to report all violations of the ground rules for the election, but none were reported.

In the absence of any evidence that Livermore campaigned among the employees in work areas during working hours, it is concluded that Objection B(1) is without merit. Accordingly, it is recommended that it be dismissed.

Objection No. 5 (See Petitioner's objection B(2))

> "On March 28 and 31, 1975, too late for AFGE to rebut, NFFE Local distributed Bulletins to hospital employees containing willfully false statements which adversely affected AFGE Local 2440, and which were violative of decisions of the

Federal Labor Relations Council regarding the use of such material (bulletin attached).

(#1) states that all members are given "a Free $10,000 Accidental Death or Dismemberment Policy for All Its Members."

This is a deliberate false statement.

(#2) states that - "Part of the dues paid by AFGE members goes to the AFL-CIO strike fund."

Another deliberate and willfully false statement."

The statement in regard to the "free" $10,000 policy appeared in an undated leaflet which was entitled SEVEN DAYS TO VOTE and was addressed to all the employees in the two voting groups. The statement headed a list of four "accomplishments" claimed by Intervenor and read:

"1. A FREE $10,000 Accidental Death or Dismemberment Policy for all its members."

In Petitioner's objection, it claims that the leaflet was distributed on March 28 and 31, 1975, but, as noted previously, Little contends that Intervenor did not distribute literature after March 27, 1975. The title of the leaflet, SEVEN DAYS TO VOTE, tends to support Little's version.

According to the Intervenor, the National Federation of Federal Employees gives a $10,000 Accident Insurance policy to all members when a member's dues authorization card is processed at the National Office of the National Federation of Federal Employees. Dues of $1.75 per pay period are deducted from the member's salary and the entire amount is sent to the National Federation of Federal Employees National Office - this amount includes $.25 for the insurance policy for which the Hartford Insurance Company is the carrier.

Based upon above, I conclude that the offer of a "free" insurance policy misrepresented the actual situation. Moreover, since the offer amounted to a tangible economic benefit, it constitutes a gross misrepresentation of a material fact. However, as previously mentioned, Petitioner was aware of the contents of the leaflet as early as March 28, 1975 (a Friday) and had ample time to make an effective reply prior to the first day of the election, April 1, 1975 (a Tuesday).

In my view, such a situation is best handled through the campaign process. Hence, I conclude that this portion of the objection lacks merit.

The statement in regard to the alleged AFL-CIO strike fund appeared in a separate undated leaflet entitled SPECIAL BULLETIN. Although Erdwein

claims that the bulletin was distributed on March 28 and 31, 1975, Little asserts that Intervenor did not distribute literature after March 27, 1975. In any event, the statement appeared in the context of the following paragraph:

"Speaking of money, did you know that part of the dues paid by AFGE members goes to the AFL-CIO "STRIKE FUND". How do you like those apples?...money from government employees going for an enterprise (Strikes) that you can not legally participate in even if you wanted to, because strikes by federal employees are prohibited by law!!!"

According to Erdwein, Petitioner's National Representative, there is no AFL-CIO strike fund, and AFGE makes no financial contributions to any such fund. There being no evidence to refute this assertion, Intervenor's statement to the contrary must be considered to be a complete departure from the truth. Moreover, in view of the information disseminated by the Intervenor in regard to Federal employees' right to strike and because the Executive Order prohibits a labor organization from calling or engaging in a strike, the statement complained of by Petitioner obviously constitutes gross misrepresentation of a material fact.

However, since Petitioner was aware of Intervenor's misrepresentation at least as early as March 28, 1975, it had sufficient time in which to issue its own leaflet rebutting the misstatement.

Based upon the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 5 is found to have no merit.

ADDITIONAL OBJECTION

In a letter dated May 30, 1975, Petitioner submitted additional evidence with respect to the timely filed objections which included a letter from Val J. Kozak, NFFE Director of Field Operations dated March 25, 1975, which was addressed to NFFE members urging them to solicit SF 1187 (dues withholding forms) from eligible employees. According to the letter, NFFE would pay $5.00 for each SF 1187 obtained, such money payable upon winning the election. Petitioner explained that the letter had come into his possession only recently and added the following objection:

"Because this letter was sent only to NFFE members and not distributed with election campaign literature to all employees, we could not make as part of your original complaint the fact that NFFE, as stated in the letter, was paying $5.00 for each SF-1187 signed by an eligible voter in the election. Payable upon winning the election. We feel that this additional improper action must be

considered by your office as further proof of our contentions and included in your investigation of the conduct affecting the Results of the Election."

Although Petitioner in explaining the objections set forth in its letter of April 8, 1975, states that it was this letter which it intended to attack, it is clear from the objections that the March 25, 1975 letter was not intended as an objection. In its letter of May 30, 1975, Petitioner contends that the letter only came into its possession recently since it was only sent to NFFE members and not distributed with election campaign literature to all employees. (emphasis underscored)

While there may be occasions when such practice would interfere with the conduct of a fair and free election, I make no findings with respect to this objection since it has been untimely filed. I also note that the objectionable letter was mailed solely to NFFE members and was not distributed as part of NFFE's election campaign. In addition, there is no evidence that the offer was discussed among the employees or that any money had actually been paid for such solicitation.

Having considered each of the objections individually and finding that they lack merit, I also conclude that considering their overall effect, there is no merit.

Pursuant to Section 202.20(f) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business November 7, 1975.

DATED: October 22, 1975

THOMAS P. GILMARTIN
Acting Assistant Regional Director
New York Region

Attach: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-19-76

Mr. Paul Hecht
President, Local 3134
American Federation of Government Employees
26 Federal Plaza
New York, New York 10007

691

Re; Small Business Administration
New York, New York
Case No. 30-6154(CA)

Dear Mr. Hecht:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the complaint in the above-named case, alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that further proceedings in this matter are unwarranted. Thus, in my view, the evidence herein did not establish that the Activity's conduct herein was in derogation of its bargaining obligation under the Order. In this respect, it should be noted that under Section 203.6(e) of the Assistant Secretary's Regulations, the burden of proof is on the complainant at all stages of the proceeding. Moreover, as your allegation that the Activity failed to comply with requests for documents was not included in your pre-complaint charge but, rather, appeared only in a letter addressed to the Area Director which accompanied the complaint, it cannot be considered pursuant to Section 202.3(b)(1) of the Assistant Secretary's Regulations which, in effect, limits the contents of a complaint to matters raised in the pre-complaint charge. Further, as your allegations that the Activity violated the parties' General Agreement and failed "as late as May 1975," to comply with requests for documents were raised for the first time in the request for review, they cannot be considered by the Assistant Secretary. In this regard, see Report on a Ruling, No. 46 (copy enclosed).

Accordingly, and as the evidence does not indicate that the Area Director failed to conduct a proper investigation of the complaint in this matter, your request for review, seeking reversal of the Assistant Regional Director's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachments

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

September 3, 1975 In reply refer to Case No. 30-6154(CA)

Paul Hecht, President
Local 3134
American Federation of Government
Employees, AFL-CIO
c/o Small Business Administration
26 Federal Plaza
New York, New York 10007

Re: Small Business Administration
New York, New York

Dear Mr. Hecht:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Thus, in your complaint you allege that the Respondent unilaterally reconstructed sixteen personnel actions without consulting, conferring, or negotiating with the Complainant in violation of Sections 19(a)(1) and (6) of the Order.

A review of the evidence discloses that Respondent, by letter dated January 18, 1974, advised Local 3134, American Federation of Government Employees, AFL-CIO, (hereinafter referred to as Complainant) that it was going to reconstruct ten promotional actions to assure that repromotion eligibles would be afforded the consideration to which they were entitled. 1/

1/ Sixteen positions had been announced during 1973 and the reconstruction process involved these sixteen announcements. Ten of the announced positions had been filled, two involved no repromotion eligibles and four had not been filled.

The letter outlined the procedures which Respondent intended to observe in accomplishing the reconstruction to assure proper priority consideration would be provided to the repromotion eligibles. The reconstruction process, in brief, provided that the selecting official would be given a roster of qualified repromotion eligibles. If he did not make a selection, all candidates including the repromotion eligibles would be re-evaluated and ranked under merit promotion procedures and the best qualified certified to the selecting official. If a repromotion eligible was among the best qualified, the selecting official had to document his reason(s) for non-selection.

Pursuant to Section 12(b)(2) of the Order, management officials retain the right to hire, promote, transfer, assign and retain employees in positions within an agency. In my view, the decision to reconstruct the promotional actions is a right reserved solely to management and is non-negotiable. This is not to say that Respondent was under no obligation to provide Complainant with adequate notice of its intentions and to afford Complainant an opportunity to bargain, to the extent consonant with law, over the procedures Respondent intended to utilize and/or the adverse impact on employees who may be affected.

You contend that Complainant first learned of the names of the employees on the repromotion register and the titles to be reconstructed on or about August 1974, and that in March 1975, Complainant was advised by Respondent that the reconstruction actions had been completed. 2/ Moreover, you contend that Respondent's unilateral actions to reconstruct the promotional actions violated Sections 19(a)(1) and (6) of the Order since Respondent failed to consult, confer or negotiate such actions with the Complainant.

A review of the evidence obtained during the investigation discloses that Respondent fulfilled any obligations it had, in this respect,

2/ Evidence discloses that you specifically requested and received merit promotion records for three (3) of the actions involved on or about June 20, 1975.

through the exchange of correspondence and meetings held on June 14, June 19, July 10, July 31 and August 15, 1974. No evidence has been adduced which would form a basis to conclude that Complainant ever requested to bargain as to the procedures being utilized or the adverse impact upon employees. In this respect, I note that the Area Office on June 27, July 7 and July 21, 1975, attempted to solicit additional evidence from you in support of the complaint; however, you have failed to respond to such request.

Based on the foregoing, I find that Respondent has not engaged in unilateral actions to reconstruct the promotions and accordingly has not violated Sections 19(a)(1) and (6) of the Order.

Neither the complaint nor the pre-complaint charge alleges that Respondent failed to comply with Complainant's request for documents concerning the reconstruction actions. An examination of the evidence discloses that Respondent did comply with specific requests for documents with the exception of the Complainant's request for supervisory appraisals. Evidence discloses that your request was denied on June 19, 1974. Since the pre-complaint charge was filed February 14, 1975 and the complaint was filed April 28, 1975, I conclude that even if alleged, this allegation would be untimely.

I am, therefore, dismissing the entire complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 19, 1975.

In view of your failure to furnish sufficient information to support the complaint, an independent investigation was undertaken by the Area Office pursuant to Section 203.6 of the Regulations

of the Assistant Secretary, to obtain sufficient documentation. Copies of the documents obtained are enclosed for your information. 3/

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

CC: Windle B. Priem, Regional Director
Local 3134
American Federation of Govt. Employees, AFL-CIO (w/out attach.)
c/o Small Business Administration
26 Federal Plaza
New York, New York 10007

Robert Chalik, Assist. Regional Counsel
Small Business Administration (w/out attach.)
26 Federal Plaza
New York, New York 10007

3/ On a prior occasion, the Area Office sought to obtain a signed statement from you to support your complaint but you declined the interview and promised to submit information to support the complaint.

3-18-76

692

Mr. Harry H. Zucker
President, Local 1151
American Federation of Government
Employees, AFL-CIO
252 Seventh Avenue
New York, New York 10001

Re: Veterans Administration Hospital
Outpatient Clinic
New York, New York
Case No. 30-6467(CA)

Dear Mr. Zucker:

I have considered carefully your request for review, seeking reversal of the Assistant Regional Director's dismissal of the instant complaint alleging that the Respondent Activity violated Section 19(a)(1), (4), (5), and (6) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based essentially on his reasoning, I find that further proceedings in this matter are unwarranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, it was noted particularly that the evidence did not establish a reasonable basis for the allegation that the actions taken by the Respondent with respect to Ms. Nathan were motivated by anti-union considerations or because of her activities on behalf of Local 1151, American Federation of Government Employees, AFL-CIO (AFGE). Similarly, a reasonable basis was not established for the allegation that the Respondent's actions were based on Ms. Nathan's having given testimony under the Order. And with respect to your Section 19(a)(5) and (6) allegations, I find, in agreement with the Assistant Regional Director, that the evidence does not establish that the Respondent acted in derogation of the AFGE's rights under the Order.

Accordingly, your request for review, seeking reversal of the dismissal of the complaint by the Assistant Regional Director, is denied.

Sincerely,

Attachment

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Suite 3515
1515 Broadway
New York, New York 10036

November 20, 1975 In reply refer to Case No. 30-6467(CA)

Harry H. Zucker, President
Local 1151
American Federation of Government
Employees, AFL-CIO
252 Seventh Avenue
New York, New York 10001

Re: Veterans Administration Hospital
Outpatient Clinic
New York, New York

Dear Mr. Zucker:

The above captioned case alleging violations of Section 19(a)(1)(4)(5) and (6) of Executive Order 11491, as amended, has been investigated and carefully considered. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Complainant alleges that the Respondent has interfered with, restrained and coerced Gloria Nathan in the exercise of her rights under the Order and has wilfully obstructed the exclusive representative from asserting and discharging its rights and obligations under the Order by the following actions:

A. Wilfully delaying and refusing to timely process the multiple grievances occasioned by the miltiple personnel actions taken against Gloria Nathan.
B. Depriving Gloria Nathan of her right to a full and impartial hearing before a neutral grievance examiner or hearing officer and obstructing the grievance hearing examiner or hearing officer from rendering a decision by wilfully delaying giving and withholding the tapes and transcript of the examiner's hearing/investigation from the examiner.
C. Dismissal of Gloria Nathan during the pendency of the hearing/investigation so as to prevent the issuance of the grievance examiner's report and findings.

Respondent has requested dismissal of the complaint in its entirety maintaining that the complaint lacks the specificity required by Section 203.3 of the Order; the issues raised by the complaint were subject to an established grievance procedure and, hence, Section 19(d) of the Order is applicable; and the Assistant Secretary is without jurisdiction to consider the complaint since the grievance procedure used did not result from any rights accorded to individual employees or a labor organization under the Order.1/

An examination of the evidence submitted discloses that the Grievant, Gloria Nathan, at all times filed her grievances pursuant to an agency grievance procedure and was represented by the representative of her choice, when so designated (in many instances, the Grievant who was not a union member, was represented by the Complainant).

In the matter of Office of Economic Opportunity, Region V, Chicago Illinois, A/SLMR No. 334, the Assistant Secretary distinguished between a respondent's failure to adhere to and follow a regulatory agency grievance procedure as opposed to its failure to adhere to and follow a negotiated grievance procedure. As stated by the Assistant Secretary,

> "... Thus, an agency grievance procedure does not result from any rights accorded to individual employees or to labor organizations under the Order... Under these circumstances, I find that, even assuming that an agency improperly fails to apply its own grievance procedure, such a failure standing alone, cannot be said to interfere with rights assured under the Order..."

The Assistant Secretary concluded that an agency's failure to process grievances under an agency grievance procedure was not a violation of the Order absent evidence that respondent's actions were motivated by anti-union considerations.

In the case at bar, no evidence has been adduced which would indicate that actions taken by Respondent towards Gloria Nathan were motivated by anti-union considerations or because of her activities on behalf Complainant. Nor is there any evidence that the alleged discrimina-

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1/ In view of my disposition of the complaint, I find it unnecessary to rule on the alleged lack of specificity or whether Section 19(d) of the Order is applicable.

tory action taken by Respondent against Gloria Nathan was taken because she had filed a complaint or given testimony under the Order.

Insofar as the exclusive representative is concerned, the complaint alleges that Respondent's actions have been detrimental in that such actions have deprived the exclusive representative of its rights to meaningful consultation and that such actions constitute a refusal to accord appropriate recognition. No evidence has been adduced to indicate that Respondent has failed to accord appropriate recognition to the exclusive representative for the unit in which Gloria Nathan was employed nor is there any evidence that Respondent has refused to meet and confer and/or negotiate with Complainant as required by the Order. Unilateral conduct in failing to apply the terms and conditions of an agency grievance procedure, standing alone, is not a basis for finding a violation of the Order.2/

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATTN: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business December 8, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

2/ Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR No. 334.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

3-19-76

693

Mr. Bernard J. Waters, Chapter President
H.E. Brooks Memorial Chapter
ACT, Inc.
2765 Montank Highway
Brookhaven, New York 11719

Re: Division of Military Affairs
State of New York
Case No. 30-6186(CA)

Dear Mr. Waters:

I have considered carefully your request for review seeking reversal of the Assistant Regional Director's dismissal of that portion of the complaint in the above-named case which alleges violation of Section 19(a)(2) of Executive Order 11491, as amended.

In agreement with the Assistant Regional Director, and based on his reasoning, I find that a reasonable basis has not been established for the Section 19(a)(2) allegation of the complaint and, consequently, further proceedings on such allegation are unwarranted. Further, as the material pertaining to your allegation that you were personally discriminated against was submitted for the first time with the request for review, it cannot be considered by the Assistant Secretary. In this regard, see Report on Ruling, No. 46 (copy enclosed).

Accordingly, your request for review, seeking reversal of the Assistant Regional Director's dismissal of the Section 19(a)(2) allegation in the complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

September 22, 1975 In reply refer to Case No. 30-6186(CA)

Bernard J. Waters, Chapter President
H. E. Brooks Memorial Chapter
ACT Inc.
2765 Montauk Highway
Brookhaven, New York 11719

Re: Division of Military and Naval Affairs, State of New York

Dear Mr. Waters:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

Although I intend to issue a Notice of Hearing on the alleged violations of Sections 19(a)(1) and (6) of the Order, it does not appear that further proceedings are warranted with respect to the alleged violations of Section 19(a)(2) inasmuch as a reasonable basis for this portion of the complaint has not been established. 1/

You contend that Respondent refused to negotiate with Complainant prior to making changes in an established Reduction-in-Force plan and failed to negotiate procedures for those employees adversely affected by the Reduction-in-Force. You maintain that such unilateral action by Respondent in addition to violating Sections 19(a)(1) and (6) of the Order has discouraged membership in your labor organization.

1/ Although the complaint alleges a violation of Sections 11(a) and 11(b) of the Order, I find it unnecessary to make any decision with respect to these alleged violations since violations of Section 19 of the Order are the only violations which are recognized as unfair labor practices.

Section 19(a)(2) of the Order provides that Agency Management shall not "encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotions or other conditions of employment".

After careful consideration of the evidence adduced, I conclude that Complainant has failed to establish any basis to conclude that the alleged unilateral actions may have been prompted by anti-union considerations or discriminatory motivation based upon union status or union activities.

No evidence has been adduced which would form a basis to conclude that there was any actual discrimination or disparity of treatment which would tend to encourage or discourage membership.

I am, therefore, dismissing that portion of the complaint alleging a violation of Section 19(a)(2) of the Order.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business October 8, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3-29-76

694

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1016 16th Street
Washington, D. C. 20036

Re: Federal Supply Service
General Services Administration
Case No. 22-6438(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case, alleging violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

(Certified Mail No. 701597)

December 29, 1975

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1737 H Street, N.W.
Washington, D.C. 20006

Re: Federal Supply Service
General Services Administration
Case No. 22-06438(CA)

Dear Ms. Cooper:

The above captioned case alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended, has been fully investigated and considered. It has been decided, however, that further processing of the case is not warranted since a reasonable basis for the complaint has not been established.

In your complaint, you allege that the Federal Supply Service implemented an Office Excellence plan on the fifth floor of Crystal Mall Building #4 without fulfilling its obligation to bargain with the exclusive representative regarding the impact of the plan on unit employees located on the fifth floor. Although you do not contest the fact that certain discussions regarding Office Excellence took place at periodic consultation meetings held pursuant to Article VIII of the parties' negotiated agreement, you contend that, while these discussions may have satisfied the Activity's contractual obligations, they do not satisfy the bargaining obligations imposed by the Order.

The investigation revealed that the parties discussed Office Excellence at the above mentioned consultation meetings as early as February 4, 1974, and at periodic intervals prior to the implementation of the plan on the fifth floor in the summer of 1975. During these meetings, the exclusive representative knew that the plan would be implemented throughout the building. You have neither asserted nor submitted any evidence to indicate that the exclusive representative at anytime requested bargaining regarding the implementation of Office Excellence on the fifth floor, or that the Activity at any time refused to bargain.

Precedent decisions of the Assistant Secretary have established that, in circumstances similar to those in the instant case, if management decides to effect a change in the working conditions of unit employees, it is obligated by the Order to afford the exclusive representative of those employees notice sufficient to allow the exclusive representative to make comments or recommendations concerning the change, or to request bargaining regarding the impact and implementation of the change.1/

On the basis of the evidence submitted in this case, I am of the opinion that the Union was given adequate notice of the Office Excellence plan and had ample opportunity to request negotiation on the impact and implementation of the plan. Moreover, no evidence was submitted that indicated that the exclusive representative requested bargaining on the plan's implementation, or that the Activity refused such a request.

Accordingly, as a reasonable basis for the complaint has not been established, I am dismissing this complaint in its entirety.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may within ten (10) days after service of this dismissal, appeal this action by filing a request for review with the Assistant Secretary and serving this office and the Respondent with a copy. A statement of service should be included with your request for review.

This request must contain a complete statement of the facts and reasons on which it is based and must be received by the Assistant Secretary of Labor for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington, D.C. 20004, not later than the close of business January 13, 1976.

Sincerely,

Kenneth L. Evans
Regional Administrator for
Labor Management Services

cc: Mr. Michael Timbers
Commissioner
Federal Supply Service
(Certified Mail No. 701598)

1/ Norton Air Force Base, California, A/SLMR No. 261; Bureau of Medicine and Surgery, Great Lakes Naval Hospital, Illinois, A/SLMR No. 289; and Iowa State Agricultural Stablization and Conservation Service Office, Department of Agriculture, A/SLMR No. 453.

695

Mr. Robert Alderman
Professional Engineer
General Services Administration
4 PCT
1776 Peachtree Street, N. W.
Atlanta, Georgia 30309

Mr. Benjamin Willingham
Professional Engineer
General Services Administration
4 PCT
1776 Peachtree Street, N. W.
Atlanta, Georgia 30309

MAR 26 1976

Re: General Services Administration
Regional Office, Region 4
Case No. 40-6038(RO)

Dear Sirs:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your objections to the election in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings on the subject objections are unwarranted on the basis that the objecting employees individually do not have standing to file objections to the election held in this matter.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Objections, is denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

GENERAL SERVICES ADMINISTRATION
REGIONAL OFFICE, REGION 4

Activity

and

Case No. 40-6038(RO)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 2067, AFL-CIO

Petitioner

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the provisions of an Agreement for Directed Election approved on November 28, 1975, an election by secret ballot was conducted under the supervision of the Area Director, Atlanta, Georgia, on December 17, 1975. 1/

The results of the election, as set forth in the Tallies of Ballots, are as follows:

Tally of Ballots for Professional Employees

Approximate number of eligible voters.....34

Void ballots..... 0

Votes cast for inclusion in the nonprofessional unit..... 7

Votes cast for a separate professional unit.....10

Valid votes counted.....17

Challenged ballots..... 0

Valid votes counted plus challenged ballots.....17

A majority of valid votes counted plus challenged ballots has not been cast for inclusion in the nonprofessional unit.

Votes cast for American Federation of Government Employees, Local 2067, AFL-CIO..... 6

Votes cast against exclusive recognition.....11

Void ballots..... 0

Valid votes counted.....17

Valid votes counted plus challenged ballots.....17

A majority of valid votes counted plus challenged ballots has not been cast for American Federation of Government Employees, Local 2067, AFL-CIO.

1/ The election was conducted pursuant to the Decision and Direction of Election in A/SLMR No. 575.

Tally of Ballots for Non-Professional Employees

Approximate number of eligible voters.....371

Void ballots..... 0

Votes cast for American Federation of Government Employees, Local 2067, AFL-CIO.....136

Votes cast against exclusive recognition..... 90

Valid votes counted.....226

Challenged ballots..... 1

Valid votes counted plus challenged ballots.....227

The challenged ballot is insufficient to affect the results of the election.

A majority of the valid votes counted plus challenged ballots has been cast for American Federation of Government Employees, Local 2067, AFL-CIO.

Objections to the procedural conduct of the election were filed on December 24, 1975, by three (3) professional employees of the Activity. The objections are attached hereto as Appendix A.

Section 202.20(b) of the regulations of the Assistant Secretary provides, in pertinent part:

> Within five (5) days after the tally of ballots has been furnished, a party may file objections to the procedural conduct of the election . . . setting forth a clear and concise statement of the reasons therefor.

None of the employees who filed the objections to the election was a party in the representation hearing; none was granted intervention at any time; none participated in the election arrangements or signed, either individually or on behalf of other employees, the Agreement for Directed Election. Since none of the employees who filed the objections to the election is a "party" to the proceeding, none of the employees individually or collectively has standing to file objections to the election. Report Number 17 issued by the Assistant Secretary on November 16, 1970, states, in part that no provision is made for the filing of objections by parties other than those involved in the particular election.

In light of my finding, it is not necessary to consider the merits of the objections.

Having found that the employees filing the objection have no standing to file objections, the parties are advised hereby that an appropriate Certification of Results of Election and an appropriate Certification of Representative on behalf of American Federation of Government Employees, Local 2067, AFL-CIO, will be issued by the Area Director, absent the timely filing of a request for review.

Pursuant to Section 202.20(f) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Acting Regional Administrator for Labor-Management Services as well as the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business January 19, 1976.

Labor-Management Services Administration

DATED: January 2, 1976

B. R. Withers, Jr., Acting Regional Administrator for Labor-Management Services

Attachments: Appendix A
Service Sheet

3-25-76

696

Mr. Lem R. Bridges
Regional Administrator, LMSA
U.S. Department of Labor
Room 300
1371 Peachtree Street, N.W.
Atlanta, Georgia 30309

Re: Internal Revenue Service
Greensboro District Office
Greensboro, North Carolina
Case No. 40-5314(AP)
FLRC No. 74A-79

Dear Mr. Bridges:

Pursuant to the Decision on Appeal by the Federal Labor Relations Council in the above-captioned matter, this case is hereby remanded to you for the purpose of complying with the direction of the Council stated at page 9 of its Decision, to "return the matter to the parties for determination as to the timeliness of the appeal."

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

UNITED STATES
FEDERAL LABOR RELATIONS COUNCIL
WASHINGTON, D.C. 20415

Internal Revenue Service,
Greensboro District Office,
Greensboro, North Carolina

and

National Treasury Employees Union

Assistant Secretary
Case No. 40-5314 (AP)
FLRC No. 74A-79

DECISION ON APPEAL FROM
ASSISTANT SECRETARY DECISION

Background of Case

This appeal arose from a decision of the Assistant Secretary who, upon the filing of an Application for Decision on Grievability or Arbitrability by the National Treasury Employees Union (NTEU), held that, under the circumstances of the case, the question of whether the matter in dispute was subject to advisory arbitration under the agreement, as well as a finding on the merits, involves questions concerning the interpretation and application of the agreement and should be resolved through the negotiated grievance procedure.

The underlying circumstances of the case, as established by the entire record in the matter, are as follows: On September 30, 1973, an employee of the Internal Revenue Service (IRS) was downgraded from Revenue Officer, GS-9, to Revenue Representative, GS-7. IRS contended that the employee had voluntarily requested the downgrading in a letter dated September 5, 1973, in which he had requested reassignment to be effective September 30, 1973. NTEU contended that the employee was coerced into requesting the reduction in rank, thereby making the reassignment involuntary and, thus, an adverse action.

In a letter dated December 6, 1973, NTEU's General Counsel addressed a letter to the Director of the Federal Mediation and Conciliation Service requesting a list of arbitrators for the purpose of invoking arbitration in the matter under Article 32 of the negotiated agreement.1/ IRS received

1/ Article 32 of the negotiated agreement between IRS and NTEU, in effect at the time here involved, provides in pertinent part:

Advisory Arbitration Of Adverse Actions

Section 1.
When arbitration is invoked, the parties will, within ten (10) work days, request a list of five (5) Arbitrators from the Federal

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a copy of the letter on December 10, 1973, and it asserts that this was the first time that it became cognizant of the allegation that the employee's reassignment was not voluntary but was instead considered to be an adverse action. Thereafter, IRS responded to NTEU quoting pertinent provisions of the Federal Personnel Manual regarding the time limits for filing an appeal from an adverse action[2/] and asked NTEU to furnish

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Mediation and Conciliation Service. The parties will meet within ten (10) work days after receipt of the list to seek agreement on an Arbitrator. If the parties cannot agree on an Arbitrator, the Employer and the Union will each strike one name from the list alternately until one name remains. The remaining person will be the duly selected Arbitrator.

Section 2.

A. When Advisory Arbitration is invoked, it serves as an alternate to the Employer's appeals procedure, and the employee must choose one procedure or the other.

B. If the employee chooses Advisory Arbitration, he is entitled to a Hearing before the Arbitrator.

. . . . . .

Section 6.

A. The decision of the Arbitrator may not relate to the contents of the Treasury Department's or Employer's policy, but is restricted to the propriety of an Adverse Action in a particular case.

B. The decision of the Arbitrator will be advisory in nature.

C. The burden of proof will be substantial evidence.

D. The Arbitrator's authority will be limited to affirmation or reversal of the Employer's action.

E. Upon recommendation of a reversal, the Arbitrator may further recommend that the employee be made whole to the extent such remedy is not limited by Statute or Regulation.

2/ The IRS response quoted the Federal Personnel Manual, chapter 771, subchapter 2, section 2-10b(2), in effect at the time here involved, as follows:

(2) When the appeal does not show clearly whether the action was voluntary or involuntary and the agency receives the appeal more than 15 calendar days after the effective date of the action, the

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an explanation for the delay in submitting the appeal. On January 10, 1974, NTEU responded, setting forth its reasons for the delay. On January 23, 1974, IRS rejected the explanation claiming that the delay from September 30, 1973, the effective date of the employee's reassignment, until December 6, 1973, the date of NTEU's letter of appeal, was excessive and that the explanation did not justify the delay. IRS informed NTEU of its right to appeal the decision on the timeliness question to either the Regional Commissioner of IRS or to the Regional Director of the Civil Service Commission. However, no appeal from the decision was taken and subsequently NTEU invoked arbitration in the matter pursuant to Article 32. When IRS declined to participate in the arbitration because no determination had been made that an adverse action was, in fact, involved, an Application for Decision on Grievability or Arbitrability was filed with the Acting Assistant Regional Director who found that there were two questions before him—the timeliness of the employee's and the union's appeal to the agency and the propriety of invoking advisory arbitration in the matter. He concluded that it would be "inappropriate" for him to rule on the timeliness question and that under the parties' collective bargaining agreement there had to be a prior determination that an adverse action was involved before advisory arbitration could be invoked. He therefore dismissed the Application.

On review the Assistant Secretary reversed the finding of the Acting Assistant Regional Director, concluding:

> [I]n the particular circumstances of this case both the threshold question of determining whether an involuntary downgrading of an employee is an adverse action and thus subject to advisory arbitration under Article 32 "Advisory Arbitration of Adverse Actions," of the negotiated agreement, as well as a finding on the merits (if the arbitrator determines that such action is subject to the provisions of Article 32) involve questions of interpretation and application of such negotiated agreement and should be resolved through the negotiated procedure.

IRS appealed the decision to the Council, alleging that the Assistant Secretary's decision was arbitrary and capricious and presented major

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agency should ask the employee to explain the delay before asking him to explain in detail why he considers the action involuntary. The 15-day time limit for appeal should not be applied strictly to an appeal from a normally voluntary action, since the employee is not notified of a time limit. The appeal should be rejected as untimely, however, when the delay is excessive and the employee does not offer an acceptable explanation.

policy issues and requested a stay of the Assistant Secretary's decision. NTEU filed an opposition to the appeal.

The Council decided that the Assistant Secretary's decision raised major policy issues concerning the application of section 13(d) of the Order, particularly, in the circumstances of the case, whether an arbitrator, sitting in advisory arbitration during an adverse action appeal, has the authority to decide whether or not the downgrading of the employee was, in fact, involuntary and thus an adverse action[3/] and whether the arbitrator in such a case would have the authority to decide a question as to the timeliness of the request for such arbitration. The Council also determined that the issuance of a stay was warranted and granted IRS's request. Both parties filed briefs on the merits.

Opinion

In support of the contentions made in its appeal to the Council, IRS stated, in part, that advisory arbitration under the collective bargaining agreement pertains only to actions predetermined to be adverse actions and the authority of the arbitrator is limited by the agreement and Civil Service Commission (CSC) regulations solely to determination of the propriety of an adverse action whereas the authority to determine whether an action is involuntary, and thus an adverse action, rests solely in the statutory appeals system in CSC regulations. Further, IRS stated that, in any event, the request for advisory arbitration was untimely filed pursuant to CSC regulations. Since the Civil Service Commission has the responsibility to implement statutory and Executive order provisions relating to adverse actions, the Council, in accordance with established practice, requested the Commission's interpretation of the relevant statutes, Executive orders and implementing CSC regulations as they pertain to the Assistant Secretary's decision in the instant case. The question presented to the Commission was whether an arbitrator, sitting in advisory arbitration during an adverse action appeal, has the authority to decide whether or not the downgrading of an employee was, in fact, involuntary and thus an adverse action and whether the arbitrator

3/ In so stating this major policy issue, the Council noted that the Federal Personnel Manual makes it clear that an involuntary downgrading of an employee is an adverse action. FPM supplement 752-1, subchapter S1, section S1-2. Therefore, we concluded that the Assistant Secretary's apparently conflicting statement (i.e., ". . . the threshold question of determining whether an involuntary downgrading of an employee is an adverse action . . .") was inadvertent. A careful reading of the entire record in the matter before the Assistant Secretary supports this conclusion. NTEU's Application for Decision on Grievability or Arbitrability, IRS's Response to the Application, the Report and Findings of the Acting Assistant Regional Director and the opening paragraph of the Assistant Secretary's decision all speak to the authority of the arbitrator to determine the voluntariness or involuntariness of the downgrading.

in such a case would have the authority to decide a question as to the timeliness of the request for such arbitration. The Commission replied in relevant part as follows:

> Executive Order 10987, January 17, 1962, provided that, under implementing regulations issued by the Civil Service Commission, the head of each department and agency shall establish an appeals system to reconsider administrative decisions to take adverse actions against employees. It further provided that the agency system may include provisions for advisory arbitration where appropriate.
>
> Subpart B of part 771 of the Commission's regulations (issued under 5 USC 1302, 3301, and 3302 and Executive Orders 10577 and 10987) implemented Executive Order 10987. Section 771.218(b) stated that the scope of appellate review of an agency appeals system should have included but should not have been limited to (1) a review of the issues of fact and (2) a review of compliance with agency and Commission procedural requirements for effecting the adverse action. Sections 771.223-224 outlined the restrictions on the agency use of advisory arbitration. Section 771.224 (c) restricted advisory arbitration to the propriety of an adverse action in a particular case. Section 771.224(d) stated that in a one-level appeals system advisory arbitration served as an alternate to the agency examiner and permitted the employee to elect one or the other but prohibited the use of both.
>
> Section 2-10b, Special Issues in Appeals, chapter 771 of the basic Federal Personnel Manual discussed allegations of coercion. This section stated that when an employee submitted an appeal from a normally voluntary action and the appeal showed clearly that the action was voluntary, the action should have been rejected. In addition, when the appeal did not show clearly whether the action was voluntary or involuntary, the agency should first have asked the employee to explain the delay in filing (if the appeal was not filed within the 15-day time limit for adverse action appeals) and then, if the reasons offered for late filing were acceptable, the employee should have been asked to explain in detail why he considered the action involuntary.
>
> It should be noted that CSC instructions explained that since an employee was not notified of a time limit on a normally voluntary action, the 15-day time limit should not have been applied strictly. The appeal should, however, have been rejected as untimely when the delay was not explained or when the employee did not offer an acceptable explanation. When the agency rejected an appeal, the notice of rejection must have been in writing and have informed the employee that an attempt to appeal further was subject to a time limit of 15 days.

Section 752.205 prescribed restrictions on the use of appeal rights from adverse actions. It prohibited concurrent appeals to the agency and the Commission on the same adverse action; required an employee to forfeit a right of appeal to the agency if he appealed first to the Commission; and described an employee's appeal rights to the Commission after having first appealed to the agency. Chapter 752(1-5b) of the basic Federal Personnel Manual clearly described the relationship between appeals to the agency and appeals to the Commission.

Section 752.204 not only prescribed time limits for filing adverse action appeals but also provided for the Commission or the agency, as appropriate, to extend the time limit on an appeal to it when the appellant showed that he was not otherwise aware of the time limit or that he was prevented by circumstances beyond his control from appealing within the time limit.

The above provisions of Commission regulations and Executive Order 10987 were in effect until September 9, 1974. At that time Executive Order 11787 revoked Executive Order 10987 and the Commission amended its regulations accordingly. The appeals system established by the Civil Service Commission under chapter 77 of title 5, USC, and section 22 of Executive Order 11491 of October 29, 1969, became the sole system of appeal for an employee covered by that system. However, since your questions are based on a case which originated and was processed under law, Executive orders, and regulations in effect prior to September 9, 1974, our reply is based on our interpretation of policy at that time.

In any appeal to the Commission, the hearing officer first examines an appeal to determine whether (1) the appeal is timely; and (2) the employee and the action appealed are covered by CSC regulations. Prior to September 9, 1974, an employee could elect to appeal either to the Commission or to the agency (including invoking advisory arbitration under negotiated procedures). If the employee elected to appeal to the agency, under CSC instructions (section 2-10b of chapter 771 of the FPM), the agency first had to make a timeliness determination. If the agency rejected the appeal as untimely, the written decision informing the employee of the untimeliness of his appeal had to inform the employee of his right to appeal the decision within 15 calendar days either to the Commission or to the agency. The agency was instructed to refer the appeal to an examiner (or arbitrator) when the deciding official had accepted the appeal, when the deciding official was unable to resolve relevant and material factual issues concerning the voluntary or involuntary character of the action, and when the employee requested a hearing. Under applicable implementing agency procedures, the examiner (or the alternative arbitrator) would, therefore, not be authorized to

consider timeliness since the agency resolved this issue either by accepting the appeal or by rejecting it and informing the employee of his appeal rights on the rejection decision. Nevertheless, when the appeal was accepted and referred for a hearing, the examiner (or arbitrator) could consider whether or not the downgrading of an employee was, in fact, involuntary and thus an adverse action.

In replying to your questions concerning the authority of the arbitrator to decide whether an agency action was involuntary and whether an employee request for arbitration was timely, we have reversed the order of the questions. In summary, under Commission regulations and instructions in effect on September 30, 1973, the effective date of the personnel action at issue, and January 25, 1974, when the union invoked advisory arbitration, the timeliness issue had to be settled before a case could be examined either on procedures or on its merits. In this case the agency gave the employee a written decision that his appeal was untimely and informed him in writing of his rights to appeal, within 15 calendar days, the decision on timeliness either to the Civil Service Commission or to a higher level in the agency. The employee did not exercise either appeal right but, instead, sought redress through advisory arbitration, a remedy not available to him unless and until his appeal was accepted as timely. The employee may want to consider pursuing his appeal on the timeliness issue under applicable regulations. These permit an extension if the appellant shows that he was not notified of the time limit and was not otherwise aware of it, or that he was prevented by circumstances beyond his control from appealing within the time limit. In reply to your first question, if the employee now appeals the timeliness issue and is upheld and thereafter invokes advisory arbitration, the arbitrator would have the authority to render an advisory opinion on the procedural and merit aspects of the alleged involuntary downgrading.

On the basis of the foregoing interpretation by the Civil Service Commission, it is evident that the Assistant Secretary's decision, to the extent that if found proper for arbitration the question of whether or not the downgrading was in fact involuntary, is consistent with appropriate regulations and with the purposes of the Order. In this latter regard, section 13(d) of the Order provides:

> (d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Assistant Secretary for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted

to arbitration or may be referred to the Assistant Secretary for decision.4/

In the present case the Assistant Secretary found that the threshold question of whether the downgrading was voluntary or involuntary was properly subject to arbitration under the negotiated agreement. As previously indicated, this determination is consistent with the mandate of section 13(d) of the Order5/ and also with CSC regulations cited by the Commission.6/ Accordingly, the Assistant Secretary's decision, to the extent that it held that the question of whether or not the downgrading of the employee was involuntary was for advisory arbitration under the agreement, is sustained.7/

4/ Section 13(d) is cited as amended by E.O. 11838. While the subject decision of the Assistant Secretary was decided under the Order prior to amendment by E.O. 11838, the Order was not changed in respects which are material in this case. Further, while section 13(d) now requires that disagreements between the parties on questions of whether a grievance is on a matter subject to a statutory appeal procedure be referred to the Assistant Secretary for decision, there was no such explicit requirement in the Order at the time this matter was before the Assistant Secretary. However, this change is not material to the resolution of this case since the matter was taken to the Assistant Secretary for resolution.

5/ See also the discussion of the obligations of the Assistant Secretary under section 13(d) in Department of the Navy, Naval Ammunition Depot, Crane, Indiana and Local 1415, American Federation of Government Employees, AFL-CIO, FLRC No. 74A-19 (February 7, 1975), Report No. 63.

6/ In this regard, see the discussion in the CSC reply, quoted supra, at 6:

> The agency was instructed to refer the appeal to an examiner (or arbitrator) when the deciding official had accepted the appeal, when the deciding official was unable to resolve relevant and material factual issues concerning the voluntary or involuntary character of the action, and when the employee requested a hearing. [Emphasis added.]

7/ The present case is to be distinguished from the Council's decision in Internal Revenue Service, Austin Service Center, Austin, Texas and National Treasury Employees Union, Assistant Secretary Case No. 63-4995 (G&A), FLRC No. 74A-81 (January 15, 1976), Report No. 95. In that case NTEU had asserted that the failure of IRS to return an employee to an active duty status for reasons other than workload constituted a suspension for greater than 30 days and was thus an adverse action subject to advisory arbitration under the collective bargaining agreement. The (Continued)

However, the Civil Service Commission's response indicates that, under Commission regulations and instructions in effect at the time involved, the employee could not seek redress through advisory arbitration until his appeal had been accepted as timely, an issue which an arbitrator was not empowered to decide. The Assistant Secretary did not address the timeliness question in his decision.

On the basis of the Commission's response it appears that at the time the Application for Decision on Grievability or Arbitrability was first filed, the matter should have been returned to the parties for resolution of the timeliness question through IRS or Commission appeal procedures. Thereafter, if the appeal were found to be timely and if there were still a question as to whether the matter was subject to arbitration under the agreement, then the matter would be proper for resolution by the Assistant Secretary. In this case the Assistant Secretary has already made the arbitrability determination consistent with the Order and CSC regulations and the only remaining matter for determination is a resolution of the timeliness question by the IRS or the Commission. Accordingly, the Assistant Secretary should return the matter to the parties for determination as to the timeliness of the appeal. If the appeal is found to be timely by proper authority, the matter may then go to advisory arbitration consistent with the decision of the Assistant Secretary.

Conclusion

Based upon the foregoing and pursuant to section 2411.18(b) of the Council's rules and regulations, we sustain the Assistant Secretary's decision to the extent that it found proper for arbitration under the agreement the question of whether the downgrading was involuntary and thus an adverse action and vacate our earlier stay of that decision; provided, however, the matter may not go to arbitration unless the

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Assistant Secretary found that the question of whether or not such an action was an adverse action and thus subject to advisory arbitration was for resolution by the arbitrator. In setting the decision aside and remanding the case to the Assistant Secretary, the Council pointed out that the threshold question to be determined in the matter was whether the failure to return the employee to active duty status for reasons other than workload was in fact an adverse action and that this determination was one of arbitrability for the Assistant Secretary since the matter could not go to an arbitrator under the agreement if the action was not an adverse action. In the present case there is no question that an involuntary downgrading is an adverse action and the only question is whether the downgrading was voluntary or involuntary. As indicated, this is a question for the trier of fact, either a hearing examiner or an arbitrator.

employee and NTEU are upheld on an appeal of the timeliness issue under applicable regulations as indicated in the Civil Service Commission's response. We hereby remand this case to the Assistant Secretary for disposition consistent with our decision herein.

By the Council.

Henry B. Frazier III
Executive Director

Issued: March 3, 1976

Patrick C. O'Donoghue, Esq.
O' Donoghue & O'Donoghue
1912 Sunderland Place, N.W.
Washington, D. C. 20036

MAR 31 1976

Re: Charleston Naval Shipyard,
Charleston, South Carolina
Case No. 40-6651(RO)

Dear Mr. O'Donoghue:

I have considered carefully your March 30, 1976, request for reconsideration of my decision in the subject case dated March 18, 1976.

I find that the circumstances set forth in your request and the attachment thereto do not warrant a result contrary to that set forth in my decision of March 18, 1976. Accordingly, your request for reconsideration is hereby denied.

Sincerely,

Paul J. Fasser, Jr.
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

CHARLESTON NAVAL SHIPYARD
CHARLESTON, SOUTH CAROLINA

Activity

and

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Petitioner

CASE NO. 40-6651(RO)

and

FEDERAL EMPLOYEES METAL TRADES COUNCIL OF CHARLESTON, AFL-CIO

Intervenor

REPORT AND FINDINGS ON OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on April 14, 1976, an election by secret ballot was conducted under the supervision of the Area Administrator, Atlanta, Georgia, on May 13, 1976.

The results of the election as set forth in the Tally of Ballots are as follows:

Approximate number of eligible voters	4600
Void Ballots	18
Votes cast for Federal Employees Metal Trades Council of Charleston, AFL-CIO	1639
Votes cast for National Association of Government Employees	1367
Votes cast against exclusive recognition	215
Valid votes counted	3221
Challenged Ballots	11
Valid votes counted plus challenged Ballots	3232

Challenges are not sufficient in number to affect the results of the election.

Timely objections to conduct improperly affecting the results of the election were filed on May 19, 1976, by the petitioner. The objections are attached hereto as Appendix A. 1/

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Administrator has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to each of the objections involved herein:

BACKGROUND

The manual balloting was scheduled from 6:00 a.m. until 7:00 p.m. on May 13, 1976. Five polling places were used throughout the Shipyard. Bus transportation was provided. The Notice of Election states as follows:

BUS TRANSPORTATION

> Passenger buses marked "Transportation to POLLS" will be operated during the hours of the election to provide transportation for voters working in the Shipyard areas South of 5th Street. The industrial bus route in that area will be used. Specific stops South of 5th Street in addition to the industrial route will include Building $199. Specific stops North of 5th Street will be each of the polling places stated in the Notice of Election. Buses will run at approximate intervals of 15 minutes. Bus runs to Building 199 will be at approximate intervals of 30 minutes. Additionally, other transportation will be provided to all employees in the unit working in outlying areas.

1/ The attachments are not included.

The Notice of Election further provided for the release of employees. It stated:

RELEASE OF EMPLOYEES

> Each department concerned will arrange to release voters in substantially equal numbers during each shift at 15 minute intervals, during voting hours, so that employees will have an opportunity to vote if they so desire.

Some voters who were on temporary duty assignment were provided with mail ballots.

Federal Employees Metal Trades Council of Charleston, AFL-CIO (FEMTCC) was certified as the exclusive representative on December 6, 1971, following an election in which National Association of Government Employees (NAGE) was the other labor organization listed on the ballot. FEMTCC and the Activity have been parties to a labor management relations agreement.

Objection No. 1 - I shall treat the following as the first objection:

> NAGE was not permitted access to unit employees equal to that accorded to FEMTCC.

NAGE asserts that Activity management denied its non-employee representative access to unit employees during non-work periods in non-work areas while permitting such access to non-employee representatives of FEMTCC. It states that the Activity policy establishing this prohibition was contrary to past practice, was not justified, and "tainted with unwarranted favoritism." It states that the Activity permitted FEMTCC to use office facilities and bulletin board space while denying such use to NAGE. It alleges that FEMTCC employee representatives acting under the guise of contract administration, actively campaigned in work areas among on-duty employees.

The FEMTCC denies that its non-employee representatives at any time entered onto Shipyard premises. It asserts that NAGE has failed to produce any evidence to the contrary. With respect to the allegations of unequal use of bulletin board space and office facilities, the FEMTCC asserts that during the campaign period it continued to use the office facilities and bulletin board space provided it by the Activity for contract administration purposes. It states that any use of these facilities for campaign purposes was forbidden that this prohibition was obeyed by FEMTCC and enforced by management and that allegation to the contrary are unsubstantiated. With respect to the allegation that FEMTCC employee representatives campaigned on work time at work locations, FEMTCC asserts that NAGE has failed to provide proof to subtantiate such allegations.

The Activity asserts that equivalent access to the electorate was provided to the two competing unions prior to the election. It notes that the rules it promulgated regarding campaigning applied equally to both labor organizations, and that any violations of such rules which may have occurred took place without its knowledge or approval. It states that during the campaign period it continued to provide FEMTCC with office facilities and bulletin board space for contract administration purposes. It asserts that NAGE has not demonstrated that it was denied reasonable access to employees. It states that during the pre-election period several reports of campaign materials were investigated by management, each case was investigated and management removed several campaign material including flyers in support of both NAGE and FEMTCC. It further asserts that it did not approve or permit any campaigning by employee representatives on work time at work locations and no such incidents were reported to the Shipyard at the time of their occurrence.

The evidence submitted indicates that there was no pre-election agreement between the parties regarding campaigning activities. The Commander of the Activity, via memorandum dated April 13, 1976, set forth Shipyard policy regarding certain campaign activities. This policy stated the following, in part:

a. Electioneering by non-employees who represent either FEMTCC or NAGE may be conducted only outside the Naval Base perimeter fence.

c. No material of any nature expressing support or opposition for or against FEMTCC or NAGE will be placed on bulletin boards, utility poles, buildings, or any other Government property on Naval premises by FEMTCC or NAGE representatives.

It must be assured that the rules enumerated above are enforced at all levels . . .

This policy further stated that non-supervisory employees may orally solicit support or opposition to NAGE or FEMTCC and distribute literature in support of or in opposition to NAGE or FEMTCC in non-work areas provided there is no interference with the work of the Shipyard.

In a letter dated April 15, 1976, NAGE filed objections to the Shipyard's policy on campaigning. Specifically it objected to the denial of access to the Shipyard premises for its non-employee representatives. It further objected to the Shipyard's refusal to provide space within the Activity to NAGE from which it could coordinate its campaign, and the Shipyard's refusal to provide NAGE with bulletin board space.

The Commander of the Shipyard responded to these objections in both a meeting held on April 23, 1976, and a letter addressed to NAGE dated April 28, 1976. In this letter he explained that the office facilities and bulletin boards provided to FEMTCC were furnished in accordance with the provisions of the negotiated agreement between the Shipyard and FEMTCC 2/, that the use of these facilities for electioneering or campaigning purposes is not authorized and such prohibition will be enforced. In addition he stated that the union could pursue three means to contact Shipyard employees outside of work hours: (1) both non-employees and employees who represent NAGE and FEMTCC can contact employees and distribute literature in the Shipyard's outer parking lot and the entrances to the Naval Base; (2) representatives who are employees can electioneer including the distribution of campaign literature - in non-work areas during non-work time; and (3) Shipyard employees have the right to orally communicate regarding representation matters in their work areas so long as such activity does not interfere with the Shipyard's work.

I view NAGE's objections regarding these allegations to be two pronged: firstly, the validity of the Activity's election ground rules are being challenged and secondly, the propriety of the application of this policy is raised. These two aspects of the first objection will be considered separately.

2/ This agreement was effective December 22, 1972, and was of three years' duration. On December 16, 1975, by agreement of the parties, it was extended "until the challenge for exclusive recognition by the National Association of Government Employees in Case No. 40-06651(RO) is finally resolved, plus ninety (90) calendar days from the date of such resolution, provided the Federal Employees Metal Trades Council of Charleston, AFL-CIO, is entitled to continue as the exclusive representative in its present Unit at the Charleston Naval Shipyard at the date of final resolution of the recognition question." Articles III and VI of that agreement contain provisions relating to FEMTCC use of bulletin boards and office space, respectively.

Section 6 of Article III reads as follows:

Management will designate reasonable space on unofficial bulletin boards for the exclusive use of the Council.

Section 8 of Article VI in relevant part reads as follows:

Management agrees that space in the Shipyard, when it can be made available . . . may be used by Council representatives for meetings regarding matters pertinent to this Agreement. Management further agrees to provide approximately two hundred (200) square feet of suitable office space in the Shipyard for exclusive utilization by Council representatives during work hours for meetings regarding matters pertinent to this Agreement.

Prior decisions of the Assistant Secretary have established the right of an Activity to establish reasonable ground rules governing campaigning provided such rules do not interfere with the rights of the electorate to exercise an unencumbered and fully informed choice. 3/ The test in determing whether the Activity's proscription of certain campaign practices constituted objectionable conduct is whether its prohibitions on campaigning constituted an unwarranted restraint upon the unions' ability to communicate with the electorate.

NAGE takes the position that the Activity's policy interferred with its ability to communicate with the electorate in its prohibiting access to the Shipyard for non-employee representatives. For the Shipyard's policy on campaigning to constitute objectionable conduct it is incumbent upon NAGE as the objecting party to demonstrate that because of the policy it was unable to communicate with the electorate. 4/ While NAGE alleges this in its objections, it provides no evidence to substantiate such allegations. Moreover, an examination of the circumstances surrounding the election finds that adequate means were available for the unions to communicate with the electorate. Thus both NAGE and FEMTCC were permitted to have employee representatives campaign on Shipyard premises in non-work areas at non-work times; both unions were able to campaign at Shipyard entrances and in employee parking lots; and other channels of communication to the unit members were available, including radio, television, newspaper and billboards. When these means of communication are viewed in connection with the geographic concentration of the Shipyard and its employees, I find that the Activity's prohibition of non-employee campaigning on its premises does not constitute objectionable conduct. The fact that a more premissive policy was established in previous elections is not controlling. Regardless of past practice the Activity has the right to establish ground rules and I find the particular rule in question to be reasonable.

NAGE asserts that the Activity's ground rules were unfair in that they permitted FEMTCC use of office facilities and bulletin board space while denying NAGE the use of such facilities. All parties agree that FEMTCC was permitted to use office facilities and bulletin board space during the campaign. It is apparent that NAGE requested the use of such facilities and this request was denied by the Activity. The ground rules limited the use of the bulletin board and office facilities accorded FEMTCC to contract administration purposes only; their use for campaigning was prohibited. FEMTCC was granted the use of the office and bulletin board spece under the provisions of its collective bargaining agreement with the Activity. Since the contract continued in effect during the period of the campaign, the Activity id not have the authority to unilaterally change its provisions. 5/ Moreover, the FEMTCC was obligated to administer its contract during the period of the election. The Assistant Secretary has previously ruled that when a question concerning representation has been raised and is not as yet resolved, an agency or activity may furnish services and facilities on an impartial basis to labor organizations having equivalent status. 6/ In the instant case, both NAGE and FEMTCC as parties to a representation proceeding were entitled to equal treatment by the Activity.

The prohibition on campaigning in the Activity's ground rules applied equally to both parties. The question to be resolved is whether in accoring FEMTCC use of the office and bulletin board facilities, while denying such use to NAGE the Activity failed to provide NAGE with a status equivalent to that it accorded to FEMTCC. With respect to the use of Activity facilities for campaign purposes, the Activity did treat each labor organization equally. While it permitted FEMTCC to continue its contractual right to use certain facilities, use of these facilities for campaigning purposes was expressly forbidden and, therefore, unrelated to the representation election and the question of equal status. Under these circumstances, I find the Activity ground rules which permitted FEMTCC to continue the use of the office facilities and bulletin board space for contract administration purposes does not constitute objectionable conduct. Whether

3/ Norfolk Naval Shipyard, A/SLMR No. 31; Portsmouth Naval Shipyard, A/SLMR No. 241.

4/ Department of the Treasury, Bureau of Customs, A/SLMR No. 169.

5/ Veterans Administration Hospital, Charleston, S.C., A/SLMR No. 87.

6/ U.S. Department of the Interior, Pacific Coast Region, Geological Survey Center, Menlo Park, California, A/SLMR No. 143; Defense Supply Agency, Defense Contract Administration Services Region SF, Burlingame, California, A/SLMR No. 247; U.S. Department of the Army, U.S. Army Natick Laboratories, Natick, Massachusetts, A/SLMR No. 263.

FEMTCC actually used these facilities for campaign purposes, an action which would be in violation of the ground rules, is a separate issue which will next be considered.

NAGE asserts that FEMTCC used the office and bulletin board facilities accorded it by the Activity for campaigning purposes. In support of this allegation NAGE submits signed statements from various employees of the Shipyard.

In a signed statement, Delbert L. Woods states that on May 13, 1976, he observed a person known to be a national representative of FEMTCC talking to a group of employees in the FEMTCC office at the Shipyard. Mr. Woods states that it appeared the FEMTCC representative was giving campaign instructions to those in the office. The FEMTCC submits a statement from Charles S. Sanders, president of the FEMTCC, in which he states that at no time during the campaign were any FEMTCC non-employee representatives present on Shipyard property to which access was prohibited by the election ground rules. Even if the person who Mr. Woods observed is assumed to be a non-employee, Mr. Woods' statement is inconclusive in establishing whether he actually was involved in campaign activities. As NAGE submits no addition evidence to support its allegation that FEMTCC non-employee representatives were permitted on Shipyard premises during the election period, I find that it has failed to support its allegation that such activity occurred.

NAGE also submits a statement from Walter G. Cook in which he states that on the date of the election he observed a FEMTCC campaign flyer posted on a particular bulletin board. Mr. Cook's statement does not identify the party responsible for the posting. The Activity asserts that during the campaign period several reports of campaign material postings were investigated by management, that in each case Shipyard management removed the material from bulletin boards, walls and other places as it appeared and came to management's attention that flyers of both unions were removed in this manner, and that it has not established the identity of those responsible for such posting. While it appears that some incidents of posting of campaign material upon bulletin boards and in other places about the Shipyard may have occurred, the identity of the parties responsible for such posting has not been made known. If NAGE's allegation that FEMTCC abused the bulletin board privileges accord it by the Activity is to be substantiated, it must be shown that FEMTCC agents were responsible for posting campaign material on these bulletin boards. No evidence has been submitted which alleges or supports such a finding. In the absence of such evidence, I find the allegation to be unsubstantiated.

Even if the incidents related by NAGE are assumed to have in fact occurred, standing along they would be insufficient to establish that FEMTCC abused the facilities provided it by management for contract administration purposes. Rather they would stand as isolated instances of improper conduct which on their face seem unlikely to influence the results of the election. In this respect it is noted that NAGE has submitted no evidence to indicate that such actions had any impact upon the free choice of the voters in the election.

NAGE submits statements from unit employees Walter C. Cook, James M. Minto, Nathaniel Richburg, Wesley W. Powell, Carl Gray and Kenneth F. Campbell which relate several instances of campaigning by FEMTCC employee representatives on work time, in work locations or near polling sites. The FEMTCC submits a statement from Charles H. Sanders in which he states that Mr. Wesley W. Powell was cited to the Shipyard for distributing NAGE literature to employees during working hours in work area. The evidence indicates that these instances are in possible violation of the Activity's ground rules. However, the evidence does not support a finding that the instances of campaigning alleged had an improper effect on the conduct of the election. In this respect the Activity's ground rules may be compared to a side agreement governing campaigning into which the parties to a representative election occasionally enter. In Report on Ruling Number 20, the Assistant Secretary ruled that he will not undertake to police such side agreements and breach thereof, absent evidence that the conduct constituting such a breach had an independent improper effect on the conduct of the election or the results of the election. I find this reasoning to be applicable to the purported breaches of the Activity's ground rules raised by NAGE. The campaigning instances related in the employees' statements contain no gross misrepresentation of material facts which impaired the employees' ability to vote intelligently, but rather appear to fall within the rights of free expression granted to employees under Section 1(a) of the Order. 7/ Moreover no evidence has been presented which indicates that management condoned such activities or treated NAGE in a disparate manner regarding their occurrence. Indeed FEMTCC has indicated NAGE may have been campaigning in violation of the Activity's ground rules. Lastly, NAGE has presented no evidence which indicates such statements had an improper impact upon the conduct of the election. Under such circumstances, I find the instances of campaigning on work time or in work locations raised by NAGE do not constitute conduct

7/ Report on Ruling Number 32.

which warrants setting the election aside.

Based on the foregoing, I conclude that no improper conduct occurred affecting the result of the election. Accordingly, Objection No. 1 is found to have no merit.

Objection No. 2 - I shall treat the following as the second objection.

Numerous unit employees were denied the opportunity to vote.

NAGE asserts that supervisory personnel denied apprentice pipefitters the opportunity to vote at Number Five Dry Dock and that approximately 50 employees temporarily assigned to the Naval Weapons Station were dissuaded from voting through inconvenient, and in one instance inadequate, transportation arrangements.

The FEMTCC states that NAGE's allegation regarding the Number Five Dry Dock employees is not substantiated by any evidence. The FEMTCC admits that one busload of employees from the Naval Weapons Station arrived at the polls too late to vote. It states, however, that the number of employees involved is incapable of affecting the outcome of the election. It asserts that the transportation arrangements for the remainder of employees at the Naval Weapons Station were adequate for employees who desired to vote.

The Activity takes the position that adequate transportation to the polls was provided for the employees temporarily assigned to work at the Naval Weapons Station. It acknowledges that one busload of fifteen employees from the Naval Weapons Station arrived at the polls after they had closed and that these employees were unable to vote. The Activity denies that any apprentices assigned to Number Five Dry Dock were denied the opportunity to vote.

As NAGE submits no evidence to support its allegation that apprentices assigned to Number Five Dry Dock were denied the opportunity to vote, I find this allegation to be without merit.

With respect to the allegation that workers temporarily assigned to the Charleston Naval Weapons Station were not provided with adequate transportation to the polls, the evidence reveals that the Activity made arrangements for election day bus transportation from Wharf A at the Naval Weapons Station to the polls and that the bus left the Wharf A area as scheduled at approximately 9:00 a.m., 11:00 a.m. and 1:30 p.m. providing employees assigned to the Weapons Station and working at those times the opportunity to vote. 8/ However, the last bus departed at 6:25 p.m. arriving at the Shipyard after the polls had closed, thereby effectively denying those employees aboard the bus the opportunity to vote. 9/ The FEMTCC submits that there were no more than 20 employees aboard the bus and probably less; the Activity states that there were 15 employees; NAGE submits a statement from Mr. Jamie L. Nettles who states that he was on the delayed bus and approximates the number of workers on the bus at 20. I find that these employees, of whatever number they may have actually been, were improperly denied the opportunity to vote in the election. However, as there is no evidence that similar activity occurred elsewhere during the election, or that such denial was intentional on the behalf of the Activity, and noting the number of employees affected was so minor in relationship to the total number of employees comprising the electorate as to be incapable of affecting the outcome of the election, 10/ I find that the denial of the opportunity to vote to these employees does not constitute conduct which warrants setting the election aside.

NAGE further alleges that the transportation arrangements for employees temporarily assigned to the Charleston Naval Weapons Station were inadequate. In support of this allegation NAGE submits a statement from employee John E. Berg who states that the 9:00 a.m. bus from the Naval Weapons Station to the polls parked at a location "in excess of 1/8th of a mile" from the place where aparoximately 24 employees were waiting to be picked up for transportation to the polls and thereafter left for the polls without picking up the waiting employees. While given the nature of shipyard work which regularly necessitates employees walking distances considerably farther than an eighth of a mile in the performance of their duties I do not find the distance to the bus to be excessive. To require a voter to walk 1/8 of a mile in order to vote is not unreasonable. In any event, after the Shipyard was notified, another bus arrived at approximately 10:30 a.m. to provide bus transportation to the employees who had earlier missed transportation to the polls. The

8/ See the last sentence under Bus Transportation in the Background portion of this Report.

9/ The Naval Weapons Station is approximately eighteen miles from the center of the Shipyard.

10/ By my calculation a minimum of 46 employees would have to have been denied the opportunity to vote to affect the election's outcome.

Activity states, and there is no evidence to refute its statement, that the subsequent buses left from a more convenient point, which it may reasonably be inferred, was well within walking distance for employees who intended to vote. Under these circumstances, I find that, with the exception of the bus which arrived at the polls after closing and which has been considered previously, the transportation arrangements were adequate to ensure that employees temporarily assigned to the Naval Weapons Station were provided with a reasonable opportunity to cast their ballots.

NAGE submits evidence indicating that there were other instances when employees purportedly were denied the right to vote. In his statement, Mr. Delbert L. Woods identifies four employees who were assigned at a later date to temporary duty in Spain on the date of the election, May 13, 1976, and would not be given an opportunity to vote in the election. This incident involves so few employees that, in the absence of any evidence to suggest that other employees were similarly situated. I find it could have had no significant impact upon the election results. NAGE also submits the statement of Mr. Douglas H. Longmore who states that when he arrived at the polls the line was so long that he left without voting. Moreover the polls were open from 6:00 a.m. until 7:00 p.m. and the Activity agreed to release employees during work time in order to permit them to vote. Under such circumstances, and noting particularly that NAGE submitted the statement of only one employee who was dissuaded from voting due to congestion at the polls, I find that ample opportunity was provided for employees who desired to vote in the election to do so.

No additional evidence was submitted which would support NAGE's allegation that numerous unit employees were denied the opportunity to vote.

Based on the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 2 is found to have no merit.

Objection No. 3 - I shall treat the following as the third objection:

> The Shipyard supplied the FEMTCC with a list of employee names and addresses.

NAGE takes the position that as unit employees who have never been members of the FEMTCC received FEMTCC campaign literature by mail at their home addresses, FEMTCC must have received employee address lists from Shipyard sources. NAGE implies that it was not provided such lists by the Activity.

FEMTCC states that the addresses of the employees cited by NAGE were obtained from the Charleston telephone directory.

The Activity denies that it provided FEMTCC with the home addresses of the employees cited by NAGE. It states that both labor organizations were provided with a list of unit employees and that a quick review of the Charleston telephone directory can provide addresses for the employees in question.

NAGE submits statements from Mr. Haskell R. Brown, Jr., Mr. William Watson, and Mr. Homer Bragg in which each states that he has never been a member of FEMTCC and that he received FEMTCC campaign material at his home. The FEMTCC submits copies of pages from the Charleston telephone directory listing the home addresses of these employees.

Inasmuch as NAGE has produced no evidence to support its allegation that the Activity provided the home addresses of these or any other unit employees I find the allegations to be unsubstantiated.

Based on the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 3 is found to have no merit.

Having found that no objectionable conduct occurred improperly affecting the results of the election, the parties are advised that a Certification of Representative in behalf of the Federal Employees Metal Trades Council of Charleston, AFL-CIO, will be issued by the Area Administrator, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the

Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business August 9, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: July 23, 1976

Seymour X Alsher

SEYMOUR X ALSHER
Acting Regional Administrator
Atlanta Region

Attachment: Appendix A
Service Sheet

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Office of Federal Labor-Management Relations
WASHINGTON, D.C. 20210

4-9-76

Mr. Kenneth L. Evans
Regional Administrator, LMSA
U. S. Department of Labor
Room 14120, Gateway Building
3535 Market Street
Philadelphia, Pennsylvania 19104

698

Re: U. S. Dependents Schools
European Area (USDESEA)
Case No. 22-6417(CA)

Dear Mr. Evans:

Pursuant to a request for review by the Complainant, the Assistant Secretary has considered the entire record in the above-named case. The Complainant alleged that the Activity discriminated against her because of her union office and union activities when it declined to arrange a transfer for her so that she could have employment in a location within commuting distance of the site where her husband, also an employee of the Activity, had been offered a transfer and promotion. The Complainant further alleged that a past practice had been established by the Activity to grant transfer requests by employees whose spouses had been transferred, and that the only difference between those cases and the Complainant's case is that the Complainant is a union activist. The Complainant also offered evidence that suggests the availability of jobs for which she was allegedly qualified and to which allegedly she could have been transferred at the time the Activity told her none were available.

Under all of the circumstances, it is concluded that an additional investigation should be conducted to ascertain whether there was a past practice of granting transfer requests by employees whose spouses had been transferred. In this regard, evidence should be adduced with regard to the number of employees, if any, who sought and were granted or denied transfers to accompany spouses who were transferred and with regard to when such actions took place. Moreover, the union affiliation, if any, of those involved in any prior instances and the availability of jobs for which the Complainant was eligible within commuting distance of the transfer site at the time she was told that no jobs were available should be ascertained. In this latter regard, the

Complainant's memorandum dated October 24, 1975, item 4, lists several alleged vacancies in the commuting area at issue. The investigation should determine whether any of these specific alleged vacancies were available and known to the Activity at the time it informed the Complainant that no such vacancies existed.

Accordingly, the case is hereby remanded to the Regional Administrator for additional investigation and the issuance of a supplemental decision.

Sincerely,

Louis S. Wallerstein
Director

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

December 18, 1975

Mr. Peter J. Migliaccio
NSA Box 31
FPO New York 09521
(Cert. Mail No. 701587)

Re: U.S. Dependents Schools
European Area (USDESEA)
Case No. 22-6417(CA)

Dear Mr. Migliaccio:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You allege that the U.S. Dependents Schools, European Area (USDESEA) violated Section 19(a)(2) of Executive Order 11491, as amended, by failing to offer the Complainant Heidemarie D. Shurtleff, a transfer to the geographic area where they had offered her spouse a transfer (promotion). You contend that other employees in similar situations had been offered transfers by the Respondent to the same location with their spouses and that Respondent's failure to accord Complainant similar treatment was the result of her union activity.

The investigation revealed that on or about June 6, 1975, the Respondent approached Complainant's spouse, a fellow employee, offering him a promotion which would entail a transfer to a different location. Inquiries were made on Complainant's behalf concerning the possibility of her being transferred to the same area. On or about June 9, 1975, Respondent's agent informed the Complainant and/or her spouse that no positions were open in the area in which she was seeking to be transferred to. You then filed an unfair labor practice charge, and failing satisfactory resolution of the charge, the subject Complaint was filed.

You have presented no evidence to support your assertion that the Respondent's actions were prompted by Complainant's union activity. Mere knowledge of union membership standing alone is not sufficient to establish a violation of Section 19(a)(2) of the Executive Order. In

the absence of any evidence showing a nexus between the Complainant's union membership and/or activity and the treatment she received, I am of the opinion that you have failed to establish a reasonable basis for the complaint.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany this request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business January 2, 1976.

Sincerely,

Kenneth L. Evans
Regional Administrator
for Labor Management Services

cc: Mr. Marty Frantz
Personnel Management Specialist
USDESEA
APO New York 09164
(Cert. Mail No. 701588)

Mr. John Schmid
American Federation of Teachers
1012 - 14th Street, N.W.
Washington,D.C. 20005

Mr. Sanburn Sutherland
Directorate of Civilian Personnel
Labor and Employee Relations Division
Department of the Army
The Pentagon
Washington,D.C. 20310

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-20-76

Mr. Mark Zaltman
Union Representative
American Federation of Government
Employees
Social Security Local 1395
165 North Canal Street
Chicago, Illinois 60606

699

Re: Social Security Administration
Bureau of Field Operations
Waukegan District Region V
Chicago, Illinois
Case No. 50-13080(CA)

Dear Mr. Zaltman:

I have considered carefully your request for review seeking reversal of the dismissal of the subject complaint by the Acting Regional Administrator.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that further proceedings herein are not warranted inasmuch as a reasonable basis for the complaint has not been established.

Accordingly, your request for review, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

SOCIAL SECURITY ADMINISTRATION,
BUREAU OF FIELD OPERATIONS,
WAUKEGAN DISTRICT, REGION 5,
CHICAGO, ILLINOIS,

Respondent

and **Case No. 50-13080(CA)**

LOCAL 1395, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,

Complainant

The Complaint in the above-captioned case was filed in the office of the Chicago Area Administrator on September 24, 1975. It alleges violations of Sections 19(a)(1), and (3) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in its entirety.

It is alleged that Respondent violated Sections 19(a)(1) and (3) of the Order by allowing ". . . a Decertification of Exclusive Representative Petition against Local 1395 to be circulated among employees of the Waukegan District Office . . ." on the premises during official time.

Accompanying the Complaint was a pre-complaint charge filed with Respondent on July 14, 1975, which also alleged violations of Sections 19(a)(1) and (3) of the Order; Respondent's final written decision denying the alleged wrongdoing, dated August 15, 1975; and four hand-written questionnaires which Complainant offers as "statements" from witnesses purporting to support the Complaint. Complainant alleged in a supplemental document that the Petition was circulated during May and June, 1975.

On July 10, 1975, a Decertification of Exclusive Representative Petition (DR) seeking an election to determine the representative status of Local 1395, AFGE, was filed with the Office of the Chicago Area Administrator by Madelyn J. Wilder, an individual and a claims representative within the Waukegan District Office of the Activity/Respondent. The petition was accompanied by a statement of service to the Activity

and an adequate showing of interest. Complainant had been granted exclusive recognition for the unit in question on June 24, 1974, in Case No. 50-11115(RO). No agreement other than a dues withholding agreement had been negotiated between the parties, and therefore the Petition was considered timely filed in accordance with Section 202.3 of the Regulations of the Assistant Secretary.

By letter of July 25, 1975, Complainant "opposed the filing" of the DR Petition, alleging that the Petitioner unlawfully solicited support for the Petition on official government time with the knowledge and approval of management. Complainant also alleged that the showing of interest was defective because it had been secured to be used to support a previous petition, and no new showing of interest had been obtained to support the present DR Petition. Complainant also indicated that it was initiating an unfair labor practice charge against the Activity, and requested the dismissal of the Petition.

On September 29, 1975, Petitioner Wilder replied to the AFGE challenge to the showing of interest by denying that management had any connection with the DR Petition. The Activity/Respondent has also denied all knowledge of the Petition being circulated, denies all allegations of collusion with Petitioner, and requests that the Complaint be dismissed. The Activity/Respondent admits and I agree that, had it knowingly and willfully maintained a no-solicitation policy, it would have been guilty of violating Section 19(a)(1) of the Order, if it could be established that solicitation was conducted only on non-duty hours in non-work areas. 1/

Activity/Respondent also contends that Complainant did not file the instant Complaint with the proper party, as the incident concerns the unit of employees in the Waukegan District Office, but Complainant has chosen to file the Complaint with Region 5, Bureau of Field Operations. Activity/Respondent contends that the Waukegan District Office is only a part of Region 5, Bureau of Field Operations, and that Region 5 as a whole is not a party to the exclusive relationship, and Activity/Respondent replied to Complainant's pre-complaint charge by advising Complainant that the charge should have been directed to Waukegan District Office management. However, since Respondent's Regional Office then proceeded to reply to the text of the pre-complaint charge, and has submitted no evidence to date to indicate that the Waukegan District Office is not subordinate to the Bureau of Field Operations, I find no merit in this contention.

Activity/Respondent also argues that Complainant has failed to meet the burden of proof required by Section 203.6(e) of the Regulations by failing to show that management permitted solicitation to take place, or that it took place on duty time or in work areas; and the statements provided fail to prove management knowledge of any solicitation.

1/ See Charleston Naval Shipyard, A/SLMR No. 1.

My review of the documentation Complainant has submitted reveals that Complainant has filed the same group of statements as evidence in the instant Complaint as it had filed as evidence in its challenge to the showing of interest on the DR Petition. An examination of the four statements reveals the following:

> Employee Gloria Carr's statement does not indicate when the Petition was circulated, or that it was circulated by management, or with management's condonation. Nor does her statement indicate that there is any other labor organization being preferred by management or even involved in the instant case.
>
> Employee Barbara Foster's statement is primarily an expression of her opinion of the lack of racial harmony in the Waukegan District Office, but it does not indicate that management either had knowledge of or participated in the circulation of the DR Petition. The statement's only direct reference to the Petition is hearsay.
>
> Employee Alma Gilbert's statement consists merely of hearsay evidence concerning the circulation of the Petition, and does not imply any management involvement.
>
> Employee William Kaiser's statement expresses a "belief" that the Petition was circulated on break time, which by its absence of concrete knowledge implies a hearsay statement also, and like all the other statements, does not indicate that management had any involvement whatsoever concerning the circulation of the DR Petition.

The inadequacy of these statements was pointed out to Complainant by the Office of the Chicago Area Administrator October 1, 1975, and Complainant was asked to furnish statements that would indicate the date that this Decertification Petition was circulated, or that it was circulated by a management official, or that it was circulated with a willful knowledge and approval of management. However, the only response from Complainant was that ample evidence to support Complainant's allegations had already been submitted, a position with which I disagree. Even had Complainant established that the Petition was circulated on official time, which it has not, it has failed to establish that management either approved or encouraged this solicitation, or even was cognizant of it. 2/

2/ Charleston Naval Shipyard, supra. See also California Army National Guard 1st Battalion, 250th Artillery Air Defense A/SLMR No. 47, and Department of the Air Force, Norton Air Force Base, California A/SLMR No. 337.

Respondent contends that a violation of Section 19(a)(3) is impossible, since there is no labor organization involved except Complainant. Complainant argues that by Respondent's allegedly aiding the Decertification Petition, Respondent opened the way for the certification of an organization more amenable to Respondent's wishes. Even assuming that Complainant may be correct in its contention that supporting a decertification amounts to supporting the alternate choice suggested in a violation of Section 19(a)(3), in the absence of any documentary support for Complainant's allegations, I find it unnecessary to rule on Complainant's interpretation of Section 19(a)(3). Complainant has failed to bear the burden of proof as required by Section 203.6(e) of the Regulations and because of this failure, I find it unnecessary to rule upon whether or not Complainant has satisfied the requirements of Sections 203.2(a)(3) and 203.3(a)(3) of the Regulations wherein it is required that Complainant furnish the specific date(s) of the alleged unfair labor practice in both the pre-complaint charge and the Complaint.

Having considered carefully all the facts and circumstances in this case, including the Decertification of Exclusive Representative Petition, the charge, the Complaint, the positions of the parties, and all that is set forth above, the Complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement os such service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based, and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business January 29, 1976.

Dated at Chicago, Illinois this 14th day of January, 1976.

Stephen F. Jercatek
Acting Regional Administrator
U. S. Department of Labor, LMSA
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-20-76

700

Mr. Alfonso Garcia
National Representative
American Federation of Government
Employees, AFL-CIO
5911 Dwyer Road #28
New Orleans, Louisiana 70126

Re: General Services Administration
Jackson/Vicksburg, Mississippi
Case No. 41-4533(RO)

Dear Mr. Garcia:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the subject petition filed by the American Federation of Government Employees, AFL-CIO, Local 3552.

In my view, your request for review raises questions of fact and policy which can best be resolved on the basis of record testimony.

Accordingly, I am hereby remanding the subject case to the Regional Administrator for reinstatement of the petition and issuance of a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

December 22, 1975

Mr. Alfonso Garcia, National
Representative
Local 2552, American Federation
of Government Employees
5911 Dwyer Road - No. 28
New Orleans, Louisiana 70126

RE: General Services Administration
Jackson/Vicksburg, Mississippi
Case No.: 41-4533(RO)

Dear Mr. Garcia:

This is to inform you that further proceedings with respect to the petition in the subject matter are not warranted. On the basis of the investigation, it has been determined that the claimed unit does not appear to be appropriate.

Investigation discloses that the unit sought consists of all GSA employees who are employed by the Activity at Jackson and Vicksburg, Mississippi. Those locations are part of Region 4, General Services Administration (GSA). Region 4 comprises the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. The structure consists of four services: (1) Public Building Service (PBS); (2) Automated Data and Telecommunications Service (ADTS); (3) National Archives and Records Service (NARS); and (4) Federal Supply Service (FSS). Each of the four services operates under the overall direction of a director located at the Regional Office in Atlanta, Georgia. All services except NARS have a field structure.

The employees at the Jackson location are assigned to PBS, ADTS and FSS. The FSS employees are limited to the Motor Pool. The Jackson location is the branch office of the Motor Pool. The employees at the Vicksburg location are assigned only to PBS and FSS. Vicksburg is a branch office of PBS. Jackson is an area office, one of the five PBS offices in Region 4. Jackson is approximately 45 miles from Vicksburg.

Investigation discloses that the employees in the unit sought have geographic location as the sole element in common. The employees in the unit sought have no common supervision; they have duties and job descriptions similar to employees in other locations throughout

the Region. The employees in the petitioned for unit who work in different locations at Jackson and Vicksburg do not have regular work contact unless they work in the same work area. The competitive area for reduction in force for employees in the petitioned for unit are in the same competitive area as employees in Mississippi and Alabama.

Although the field managers may initiate personnel actions with respect to hiring and firing, the Regional headquarters has the final authority over such personnel actions. Approval of outstanding or unsatisfactory performance ratings rests with the Regional headquarters although such personnel actions may be initiated at the field managerial level.

The Activity asserts that the appropriate unit should consist of employees within Region 4 who are not covered by existing exclusive recognitions or certifications, that there are already seventeen (17) exclusive units throughout the Region which already results in considerable fragmentation. To find the petitioned for unit appropriate, the Activity further contends, would only increase such fragmentation.

The Petitioner contends that the unit is appropriate on the grounds that there are similar units existing in Region 4 and, further, the efficiency of agency operations can effectively be carried out in such a unit.

Based on the above, I find that the petitioned for unit is inappropriate as there is insufficient evidence that the employees share a clear and identifiable community of interest separate and apart from other employees who have the same duties and job classifications of other non-represented employees throughout the Region. Other than working in the same general geographic location (albeit, as noted, Jackson and Vicksburg are 45 miles apart), the employees of the three program services have little or no commonality other than they work in the same geographic area. 1/ It appears that such a unit, if granted, would be established primarily on the basis of extent of organization. Section 10(b) of the Order specifically precludes that a unit shall be established on such a basis.

The fact that those currently may exist units similar to the unit petitioned for does not in itself justify a finding that the petitioned for unit is appropriate. Moreover, petitioner has not demonstrated that the establishment of the petitioned for unit would result in enhancing efficiency of agency operations or effective dealings.

I am, therefore, dismissing the petition.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

1/ See GSA, Fresno, California, A/SLMR No. 293.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business January 6, 1976.

Sincerely yours,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-20-76

Ms. Ethelyn M. Williams
5601 Rollins Lane
Capitol Heights, Maryland 20027

701

Re: American Federation of Government Employees, Local 41
(Social and Rehabilitation Service, Department of Health, Education and Welfare)
Case No. 22-6501(CO)

Dear Ms. Williams:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case alleging violation of Section 19(b)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted in that a reasonable basis for the instant complaint has not been established.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

February 5, 1976

PHILADELPHIA, PA 1[illegible]
TELEPHONE 215-597-1134

Ms. Ethelyn M. Williams
5601 Rollins Lane
Capitol Heights, Maryland 20027
(Cert. Mail No. 782142)

Re: AFGE, Local 41
Case No. 22-6501(CO)

Dear Ms. Williams:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The complaint alleged that Respondent violated the Order through the actions of Benjamin H. Winslow, Vice-President, AFGE, Local 41. Specifically, the complaint cited that Winslow xeroxed and distributed copies of complainant's private paper to management; acted in concert with others in not requesting a list of arbitrators from FMCS to prevent furtherance of complainant's grievance; and attempted to intimidate complainant by advising that complainant's former supervisors would be called to testify against complainant.

You have offered no evidence to support your allegations that Winslow interfered with or restrained you in violation of Executive Order 11491, as amended. Section 203.6(e) of the Rules and Regulations of the Assistant Secretary provides that the complainant shall bear the burden of proof regarding matters alleged in its complaint. I take that to mean that the complaining party has the responsibility to supply some positive or direct evidence that events have occurred or that certain facts are true. It is not sufficient to merely allege facts in the complaint conclusions of law, and then rest, asserting that a cause of action has been made out or merely submit your allegations of discriminatory acts and motivation on behalf of the Respondent. I find that you have not met the burden of proof regarding the matters alleged in the complaint.

Accordingly, for the reason stated above and on the ground that a reasonable basis for the complaint has not been established, I am dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of this request must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business February 20, 1976.

Sincerely,

Kenneth L. Evans
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-20-76

Mr. Alfonso Garcia
American Federation of Government Employees, (AFL-CIO) Local 2543
5911 Dwyer Road No. 28
New Orleans, Louisiana 70126

702

Re: U. S. Department of Agriculture
National Forests of Mississippi
Jackson, Mississippi
Case No. 41-4524(CA)

Dear Mr. Garcia:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned matter.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that further proceedings are unwarranted inasmuch as a reasonable basis for the complaint had not been established.

Accordingly, and noting that matters raised for the first time in a request for review (your contention regarding the alleged inadequacy of the showing of interest) cannot be considered by the Assistant Secretary (see Report on Ruling, No. 46 copy enclosed), your request for review is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

December 15, 1975

Mr. Alfonso Garcia
American Federation of Government
Employees, Local 2543
5911 Dwyer Road - No. 28
New Orleans, Louisiana 70126

RE: U. S. Department of Agriculture
National Forests of Mississippi
Jackson, Mississippi
Case No. 41-4524(CA)

Dear Mr. Garcia:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for complaint has not been established. Investigation disclosed that Complainant herein is the exclusive representative for a unit of employees of Respondent; the two year initial labor agreement effective on November 2, 1972, automatically renewed itself. On August 13, 1975, Local 1894, National Federation of Federal Employees (NFFE) filed a representation petition for essentially the same unit for which the incumbent AFGE had exclusive recognition. On August 21, 1975, William Clark, a national representative of NFFE requested permission from Respondent for the purpose of talking to such employees during their lunch period or during non-duty hours. Respondent granted Clark permission. Thereafter, on August 25, 26, 27 and 29, 1975, Clark visited various sites of Respondent and met with employees. There is no evidence that Clark met with employees or otherwise engaged in solicitation on behalf of NFFE during other than non-duty times at non-duty stations.

You contend that Respondent allowed NFFE to solicit members and make derogatory statements against AFGE, the incumbent, in violation of Sections 19(a)(1)(2)(3) and (5) of Executive Order 11491, and further that Respondent's failure to remove the NFFE representatives, despite requests to do so, constitutes a violation of the Order.

No evidence has been adduced that the NFFE made derogatory statements against the incumbent but, assuming such statements were made

in the course of NFFE permissible solicitation, such conduct is not the basis for a complaint particularly in the absence of evidence that Respondent condoned, sponsored or in any way indicated it agreed with such statements.

The filing of the petition which raises a question of representation places the petitioner, NFFE, in "equivalent status" with AFGE as a participant in the representation proceedings. Therefore, when Respondent gave Clark permission on August 21, 1975, to solicit employees, NFFE was already in equivalent status having filed the RO petition on August 13, 1975, (Case No. 41-4452(RO)). Thus a grant of access by Respondent is consistent with applicable precedents. See Geological Survey Center, Menlo Park, California, A/SLMR No. 143; Defense Supply Agency, Burlingame, California, A/SLMR No. 247; FAA, Eastern Region, Nashua, N.H.; A/SLMR No. 273.

Investigation further disclosed that NFFE's showing of interest was adequate to support its representation petition; that such showing of interest predated the filing of the petion; that any showing of interest it may have procured as a result of its on site solicitation did not form the basis of the showing of interest in Case No. 41-4452(RO).

In light of my finding that Respondent's granting permission to NFFE to solicit on its premises did not constitute a breach of neutrality, it is not necessary to determine whether or not AFGE may have asked Respondent to remove the NFFE representatives from its premises or otherwise to take action preventing NFFE from engaging in solicitation.

Based on the above, there is no basis for a 19(a)(1)(2) and (3) complaint. Furthermore, there is no basis for a 19(a)(5) complaint as that section deals with according recognition to the exclusive representative and no evidence has been adduced that Respondent failed to accord the exclusive representative recognition required by the Order.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business December 30, 1975.

Sincerely yours,

William D. Sexton

WILLIAM D. SEXTON
Acting Assistant Regional Director
for Labor-Management Relations

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-20-76

Mr. Thomas Daniels
Post Office Box 322
Eatontown, New Jersey 07724

703

Re: U. S. Army Electronics Command
Fort Monmouth, New Jersey
Case No. 32-4170(CA)

Dear Mr. Daniels:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the Section 19(a)(4) allegation contained in the complaint in the above-named case which alleged violations of Sections 19(a)(1), (2), and (4) of the Order.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that a reasonable basis for the Section 19(a)(4) allegation of the complaint has not been established and, consequently, further proceedings in this regard are unwarranted.

In your request for review, you question ". . . why the Acting Regional Administrator is holding in abeyance issuance of a Notice of a Hearing with regard to the alleged violations of Section 19(a)(1) and (2) of the Order since the complaint is independent of any other complaints submitted by the Complainant," and ask that the complaint be processed without any "further delay." As Section 203.8(c) of the Assistant Secretary's Regulations requires as a prerequisite to the filing of a request for review that a complaint be dismissed, your request for review with respect to the Section 19(a)(1) and (2) allegations contained in the instant complaint, which allegations have not been dismissed, is not appropriate for consideration at this time.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of Section 19(a)(4) allegation contained in the complaint, is denied.

Sincerely,

Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE

Suite 3515
1515 Broadway
New York, N. Y. 10036

December 17, 1975

In Reply Refer To:
Case No. 32-4170(CA)

Mr. Thomas Daniels
Post Office Box 322
Eatontown, New Jersey 07724

Re: U. S. Army Electronics
Command
Fort Monmouth, New Jersey

Dear Mr. Daniels:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. I am holding in abeyance issuance of Notice of Hearing with regard to the alleged violations of Section 19(a)(1) and (2) of the Order. However, it does not appear that further proceedings are warranted with regard to the alleged violation of Section 19(a)(4) inasmuch as a reasonable basis for this portion of the complaint has not been established.

The pre-complaint charge in this matter filed on March 31, 1975 alleges that Respondent has violated Section 19(a)(1), (2) and (4) of the Order by ordering you, without proper cause or authority, to refrain from dealing in (sic) union activities with Local 1498 American Federation of Government Employees. You contend that Respondent by the above action has discriminated against you, discouraged membership in Local 1498, and has interfered with, restrained and attempted to coerce you in the exercise of your rights under the Order.

The original complaint filed on July 2, 1975 set forth essentially the same allegation as contained in the pre-complaint charge; however, the complaint failed to provide information concerning the specific incidents involved and the dates and occurrences of the alleged incidents. In response to a request by the Area Director for specific information, an amended complaint was filed on July 18, 1975. Specific incidents cited were as follows:

1) The issuance of a letter on September 16, 1974 concerning the use of official time which required that you report absences from your desk in excess of fifteen minutes.

2) Alleged threatening remarks by Respondent's representatives at a subsequent meeting to the effect that disciplinary action would be taken against you if you involved yourself in future union matters.

3) A suspension in April 1975 for refusing to obey orders.[1/]

On July 28, 1975, a representative of the Newark, New Jersey Area Office met with you and obtained a signed statement to clarify your complaint. In your statement, you maintain that the basis for the unfair labor practice complaint centers around the issuance of the September 16, 1974 letter. In this respect, you contend that the letter prescribed restrictive measures over and above those set forth in a previous letter issued on September 4, 1974 which had prohibited your use of official time for union business.[2/]

Subsequently, a second amended complaint was filed on September 2, 1975. The basis for the complaint was essentially as set forth in the pre-complaint charge; however, specific incidents were cited in a supporting statement. Two new incidents were cited, namely:

A) The issuance of a letter on November 6, 1974 confirming a discussion held on September 30, 1974. This letter cited the letter of September 16, 1974 and set forth specific written instructions for you to follow in accomplishing your work.

B) A one day suspension on January 23, 1975, such suspension based partly on your absence from your work area without prior notification to your supervisor(s).

The gravamen of your complaint in this matter concerns the restrictions placed upon you by Respondent's representatives which required that you report all absences from your desk which were expected to be in excess of fifteen minutes and subsequent events directly related to such restrictions.

Under the circumstances, I find, based on the evidence you have furnished in support of your complaint, that the issuance of the September 16, 1974 letter cannot be considered inasmuch as the alleged incident occurred more than six months prior to the filing of the pre-complaint charge and more than nine months prior to the filing of the complaint. Accordingly, your complaint concerning this issue is untimely.

1/ Since this allegation concerns an issue which occurred subsequent to the pre-complaint charge, it is untimely and will not be considered.

2/ In a letter dated September 4, 1974, Respondent had advised complainant that it would no longer recognize him as President of Local 1498 since it considered him to be a supervisor. As a result, complainant was prohibited from using official time for union business. This issue is the basis of the complaint in Case 32-3938(CA) which is currently awaiting the recommended decision and order of an Administrative Law Judge.

With respect to your allegation concerning the alleged threatening remarks subsequent to the issuance of the letter of September 16, 1974, I find that this allegation lacks the specificity required by the Regulations. Hence, notwithstanding the allegation, the fact is that it does not clearly set forth the facts and fails to state the time and place of the alleged occurrence.

From the evidence adduced, the alleged remarks were apparently made at a meeting held on September 16, 1974 or on October 30, 1974. No evidence has been adduced which would form a basis to conclude that such remarks were made subsequent to these dates nor is there any evidence as to who made the alleged remarks or what alleged threatening remarks were made.

Accordingly, this allegation cannot be considered since the alleged incident occurred more than nine months prior to the filing of the complaint. Assuming arguendo that the complaint was timely with respect to this issue, I find that you have failed to sustain the burden of proof to establish a reasonable basis for this allegation.

With respect to your allegation of a violation of Section 19(a)(4), I note that you have furnished no evidence, nor have you made any assertion, that any management action occurred which tended to discriminate against you you because you filed a complaint or gave testimony under the order within the meaning of that section. You have therefore failed to sustain the burden of proof placed upon every complainant by the Regulations of the Assistant Secretary. Accordingly, I am dismissing this portion of the complaint.

With respect to the alleged violations of Sections 19(a)(1) and (2) of the Order, I find that a reasonable basis may exist for issuance of a Notice of Hearing dependent on factors cited below. The issuance of such notice is based solely upon the allegations set forth in items A and B of this letter, namely, the issuance of the letter of November 6, 1974 and the one day suspension on January 23, 1975. Inasmuch as a violation of the Order based upon these allegations is contingent upon whether or not you are a supervisor, my decision to issue a Notice of Hearing will be contingent upon the decision reached on your supervisory status in Case No. 32-3938(CA), in which a hearing has already been held.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of such service should accompany the request for review.

Such request must contain a clear statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business January 2, 1976.

Sincerely yours,

Manuel Eber
Acting Regional Administrator
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-23-76

Mr. Robert W. Ahland
12 Stephendale
Rolla, Missouri 65401

704

Re: National Federation of Federal Employees, Local 934
(U.S. Geological Survey
Rolla, Missouri)
Case No. 62-4676(CO)

Dear Mr. Ahland:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case alleging violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted as a reasonable basis for the complaint has not been established. In your request for review, you allude to the recommendation for promotion to the position of Cartographer Trainee by the National Federation of Federal Employees, Local 934, of a non-college graduate while your selection was being grieved by that same organization based on your lack of a college degree. In this regard, it is noted that the evidence establshes that, in Local 934's subsequent recommendations to the Activity, the name of the non-college graduate was deleted from its list.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

Mr. Robert Ahland
12 Stephendale
Rolla, Missouri 65401

JAN 2 S 1976

Re: 62-4676(CO)

Dear Mr. Ahland:

The above-captioned case alleging violation of Section 19(b)(1) of Executive Order 11491, as amended, has been investigated and considered carefully. In my view no reasonable basis for the complaint has been established.

In your complaint you alleged that National Federation of Federal Employees, Local 934 singled you out in a grievance over the selection of four individuals as cartographer trainees, three of whom, including yourself, ultimately were permanently assigned as cartographers. The purpose of the grievance was alleged to be to "hassle Management," and you claim that this, in effect, violated your right of non-membership in Local 934. The complaint listed two particular incidents as evidence which would support an unfair labor practice finding; one concerning Mr. Leslie Trettenero, and one concerning Mr. Harrison Meaux.

At your request, Mr. Meaux and Mr. Walter Parkinson were interviewed. As a part of the investigation, Mr. Trettenero and Mr. R. M. Stewart were also interviewed (Copies of their signed statements are enclosed). In my view, the information thus obtained, together with that which you furnished has not provided sufficient grounds for further consideration of this matter.

While there is little doubt that your particular promotion was made the primary subject of the union's grievance, there has been no evidence provided that this was because of your non-union status. In fact, there is considerable support for the conclusion that you were singled out because you do not have a bachelor's degree.

Consequently, it does not appear that further processing of your case is warranted and I am dismissing your complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary of Labor for Labor-Management Relations, you may obtain a review of this action by filing a request for review with the Assistant Secretary with a copy served upon me and the Respondent. A statement of service must accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based. The request for review must be received by the Assistant Secretary of Labor for Labor-Management Relations, Office of Federal Labor-Management Relations, 200 Constitution Avenue, N. W., Washington, D. C. 20216 by the close of business, February 12, 1976.

Sincerely,

CULLEN P. KEOUGH
Assistant Regional Director for
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-23-76

Mr. Henry T. Wilson 705
Counsel
Laborers' International Union of
North America
965 16th Street, N. W.
Washington, D. C. 20006

Re: U. S. Army Aviation Center
Fort Rucker, Alabama
Case No. 40-6690(AC)
and
Army and Air Force Exchange
Service
Fort Rucker, Alabama
Case No. 40-6689(AC)

Dear Mr. Wilson:

I have considered carefully your requests for review, seeking reversal of the Regional Administrator's dismissal of the subject petitions.

In agreement with the Regional Administrator, and noting particularly that a secret ballot vote of the members of Local 1054, Laborers' International Union of North America, AFL-CIO, was not taken on the instant affiliation question, I find that dismissal of the subject petitions is warranted. See Veterans Administration Hospital, Montrose, New York, A/SLMR No. 470.

Accordingly, your requests for review, seeking reversal of the Regional Administrator's Reports and Findings on Petitions for Amendments of Certification, are denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U. S. ARMY AVIATION CENTER FORT RUCKER, ALABAMA Activity and LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 784, AFL-CIO Petitioner	CASE NO. 40-6690(AC)

REPORT AND FINDINGS
ON
PETITION FOR AMENDMENT OF CERTIFICATION

Upon a petition for amendment of certification filed in accordance with Section 202.2(c) of the regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

Laborers' International Union of North America, Local No. 1054, AFL-CIO (hereinafter referred to as Local 1054) was certified on November 27, 1967, as the exclusive representative of all employees of the Non-Appropriated Fund Activities, U. S. Army Aviation Center, Fort Rucker, Alabama, excluding managers, assistant managers, supervisors, professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, guards, employees of the Army and Air Force Exchange, intermittent and temporary employees. 1/

Petitioner proposes to amend the certification by changing the name of the certified labor organization from Local 1054 to Laborers' International Union of North America, Local No. 784, AFL-CIO (hereinafter referred to as Local 784).

Upon request of the Area Director, the Activity posted copies of notice to employees in places where notices are normally posted affecting the employees in the unit involved setting forth the proposed amendment.

The Activity states it does not object to granting the amendment.

Investigation discloses that Local 1054 is not only the exclusive representative of approximately 205 employees of the Activity, but it is also the exclusive representative of approximately 35 employees employed by an employer in the private sector.

No individual or labor organization responded to the notice to employees except that the former president of Local 1054 supports granting the proposed amendment.

On or about June 20, 1975, Local 1054 sent letters to all 135 members notifying them that July 9, 1975, "is the date of our regularly scheduled monthly meeting for July." The letter stressed the importance that all members attend the meeting. The letter further stated:

> Since our last monthly meeting, the possibility of a merger between our Local Union 1054 and Local 784 of Montgomery has emerged, and the discussion of this matter will be the prime interest of our July meeting.
>
> Personally, as members of your Executive Board, we feel this could be a major step in curing the problems that have plagued our Union for the last few years.
>
> However, yours is the voice that must be heard. Come to the meeting and bring a fellow member with you.

1/ Case No. 40-2262(RO)
2/ This activity is Army and Air Force Exchange Service, Fort Rucker, Alabama. Petitioner simultaneously filed a petition for amendment of recognition, Case No. 40-6689(AC).

According to the minutes, after the July 9 meeting was opened, it was announced that the minutes of the previous meeting were unavailable; the financial report was read; the Business Agent J. Trawick of Local 784 was introduced. Trawick discussed a merger of Local 1054 with Local 784 and opened the subject for discussion. Questions concerning the merger were asked and answered. A motion was then made to have a "hand count" vote to decide if Local 1054's members will merge with Local 784. The motion was seconded. The result of the vote was 32 votes cast for the merger and none against. The vote for the merger was then declared carried.

Thereafter, the funds held by Local 1054 were transferred to Local 784 and the national union revoked the charter of Local 1054.

Before a finding and conclusion is made with respect to the proposed amendment, it is necessary to determine whether the petition may be properly filed by Local 784 even though Local 784 is not "currently recognized."

Section 202.1(d) of the regulations of the Assistant Secretary provide:

> A petition for clarification of an existing unit or for amendment of recognition or certification may be filed by an activity or agency or by a labor organization which is currently recognized by the activity or agency as an exclusive representative. (emphasis supplied)

Despite the literal wording of Section 202.1(d), I find that Local 784 has standing to file the petition because Local 1054, having had its charter revoked, is no longer in existence and is therefore not capable of filing the petition.

The next question is whether, under the circumstances of this case, there is sufficient evidence that the change of affiliation from Local 1054 to Local 784, which is the basis for the instant petition, tock place in a manner which assured that the standards in Veterans Administration Hospital, Montrose, New York, A/SLMR No. 470, have been met. Those standards which the Assistant Secretary states must be met in order to assure that any change in affiliation accurately reflects the desires of the membership and that no question concerning representation exists are: (1) A proposed change in affiliation should be the subject of a special meeting of the members of the incumbent labor organization, called for this purpose only, with adequate advance notice provided to the entire membership; (2) the meeting should take place at a time and place convenient to all members; (3) adequate time for discussion of the proposed change should be provided, with all members given an opportunity to raise questions within the bounds of normal parliamentary procedure; and (4) a vote by the members of the incumbent labor organization on the question should be taken by secret ballot, with the ballot clearly stating the change proposed and the choices inherent therein.

With respect to step No. (1), although Local 1054 provided adequate advance notice to the entire membership, the proposed change in affiliation or merger question was not the subject of a special meeting. With respect to step No. (2), there is no evidence that the meeting was held at an inconvenient time and place. With respect to step No. (3), there is adequate evidence that the membership was afforded full opportunity to discuss the merger question within the bounds of normal parliamentary procedure. With respect to step No. (4), the membership did not vote on the question by secret ballot. Accordingly, I find that there was no full compliance with step No. (1), the merger not having been the subject of a special meeting of the members. Additionally, I find that there is compliance with step Nos. (2) and (3). In the absence of evidence that the members of Local 1054 were afforded an opportunity to vote on the question by secret ballot with the proposed change appearing on the ballot, I further find that there was inadequate compliance with step No. (4).

Based on the above, I find that a change in affiliation from Local 1054 to Local 784 did not take place in accordance with the standards required by the Assistant Secretary. Therefore, Local 784's proposed amendment of certification is not warranted. Absent the timely filing of a request for review of this Report and Findings, I intend to issue a letter dismissing the petition.

Pursuant to Section 202.4(i) of the regulations of the Assistant Secretary, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary with a copy upon this office and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business February 4, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: January 20, 1976

LEM R. BRIDGES, Assistant Regional Director for Labor-Management Services

Attachment:
LMSA 1139, Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-23-76

706

Mr. Richard G. Remmes
General Counsel
National Association of Government
Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: Defense Civil Preparedness Agency
Region One
Maynard, Massachusetts
Case No. 31-9676(CA)

Dear Mr. Remmes:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, and noting that matters raised for the first time in the request for review (i.e., evidence to show knowledge by the Activity of the solicitation activities) cannot be considered by the Assistant Secretary at the request for review stage of the proceeding (see attached Report on Ruling of the Assistant Secretary, Report No. 46), your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachments

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

January 22, 1976 In reply refer to Case No. 31-9676(CA)

Mr. Stanley Q. Lyman
National Vice President
National Association of Government Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: Defense Civil Preparedness Agency
Region One
Maynard, Massachusetts

Dear Mr. Lyman:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your complaint alleges that the Respondent "actively sought support" of the American Federation of Government Employees, AFL-CIO, "in order for that national organization to challenge the NAGE". Further your complaint states that "membership was solicited and/or support for AFGE was obtained and/or authorized during the employee (sic) official duty time". By these actions, you conclude Respondent violated Section 19 (a)(1) and (2) of Executive Order 11491, as amended.

You submitted evidence with your complaint in the form of an affidavit which states:

> "It is our understanding that the petition to consider voting for the American Federation of Government Employees (AFGE) was circulated for signatures during working hours - August 12 and 13."

This affidavit bears the signatures of three individuals who are not further identified in your complaint.

Upon a request by the Boston Area Office, LMSA, for additional evidence to support your complaint, you submitted an affidavit which states:

> "IN THE SIGNING OF THE PETITION REGARDING UNION MATTERS, CIRCULATED BY ROBERT CUNNINGHAM OF THIS OFFICE, WE THE UNDERSIGNED UNDERSTOOD FROM THE TEXT OF SAME, THAT WE WERE AGREEING TO HEAR THE VIEWS OF A REPRESENTATIVE OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES ON WHAT HIS UNION HAD TO OFFER. IT WAS NOT INFERRED IN ANY MANNER THAT THE PETITION WAS FOR THE APPROVAL OF AN ELECTION TO DETERMINE WHICH UNION WOULD HAVE JURISDICTION, NAGE OR AFGE."

This affidavit bears the signatures of four individuals who are not further identified by you.

There has been no evidence submitted by the NAGE in support of its allegation that Respondent "actively sought support" of the AFGE so that the AFGE could challenge the incumbent status of the NAGE.

No evidence has been offered as to where, when, how, or by whom AFGE membership support was obtained beyond the bare statement that a petition was circulated by an employee of the Activity and that it was the "understanding" of three individuals that it was circulated during working hours on August 12 and 13. You have produced no evidence of Respondent's knowledge of, or involvement in, such activities and, in fact, you have failed to allege such knowledge or involvement. The affidavit offered in this regard contains the qualification that the information contained therein is the "understanding" of the affiants.

With respect to the language on the AFGE authorization petition, I find that it is so clear and unambiguous that a reasonable man reading it could not have misinterpreted its purpose.[1/] The contention set forth in the affidavit concerning this issue appears to constitute an attempt to challenge the validity of AFGE's showing of interest submitted with its RO Petition in Case No. 31-9582(RO). Section 202.2 (f)(2) of the Rules and Regulations of the Assistant Secretary provides that a challenge to the validity of a petitioner's showing of interest must be filed within ten (10) days after the initial date of posting of the notice of petition. Such notice was posted in Case No. 31-9582(RO) on August 18, 1975, some two months prior to receipt of the above-referenced affidavit in the instant case.

1/ Such language reads "I, the undersigned employee, wish to be represented for the purpose of exclusive recognition under Executive Order 11491 by the AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFL-CIO). I understand this does NOT obligate me to join, pay fees or membership dues to any Union."

As the Complainant in this matter, NAGE bears the burden of proof at all stages of the proceeding regarding matters alleged in its complaint. For the reasons set forth above I find that NAGE has not borne its burden of proving the existence of a reasonable basis for its complaint.

I am therefore, dismissing the complaint in this matter.[2/]

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor Management Relations, U.S. Department of Labor, ATT: Office of Federal Labor-Management Relations, Washington, D.C. 20216, not later than the close of business February 6, 1976.

Sincerely yours,

Manuel Ober
Acting Regional Administrator
New York Region

2/ In this regard I note that the complaint alleged a violation of Section 19 (a)(1) and (2) of the Order while the pre-complaint charge alleged violations of Section 19 (a)(1) and (3) thereof. The Boston Area Office sought amendment to cure this defect; however, you elected not to amend your complaint. In any event, in reaching my decision, I considered your complaint as containing an allegation of a violation of Section 19 (a)(3) of the Order as well as Section 19 (a)(1) and (2) thereof.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-23-76

707

Mr. William E. Persina
Assistant Counsel
National Treasury Employees Union
Suite 1101
1730 K Street, N. W.
Washington, D. C. 20006

Re: Internal Revenue Service
Brookhaven Service Center
Case No. 30-6455(CA)

Dear Mr. Persina:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges that the Activity violated Sections 19(a)(1) and (6) of the Executive Order.

In agreement with the Regional Administrator, and based on his reasoning, I find further proceedings in this matter are unwarranted in that a reasonable basis for the complaint has not been established.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

December 10, 1975 In reply refer to Case No. 30-6455(CA)

Vincent L. Connery, National President
National Treasury Employees Union
1730 K Street, N.W., Suite 1101
Washington, D.C. 20006

Re: Department of the Treasury
Internal Revenue Service
Brookhaven Service Center

Dear Mr. Connery:

The above-captioned case alleging violations of Section 19(a), subsections (1) and (6) of Executive Order 11491, as amended, has been investigated and carefully considered.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this respect, your attention is directed to Section 203.6(e) of the Regulations of the Assistant Secretary wherein it is stated that the complainant shall bear the burden of proof at all stages of the proceedings regarding matters alleged in its complaint.

In your complaint and supporting statements you describe an incident and its aftermath in which you allege that Respondent solicited a complaint against Union officials in violation of Executive Order 11491, as amended. The alleged violation revolves about an isolated incident in which an employee was requested to approve a contact memorandum or write a memorandum of her own concerning a request made to her by a Union official regarding employee paychecks. When said employee indicated an unwillingness to approve or write such memorandum on the basis Respondent's representatives had misunderstood what had actually taken place, Respondent advised the employee that the matter was closed.

No evidence has been adduced which would form a basis to conclude that Respondent derogated the Union or any of its officials or that it tried to secure privileged information concerning Union activities of its employees. Evidence has not been submitted to show that the Agency engaged in conduct that interfered with, restrained or coerced an employee in the exercise of rights assured by Section 19(a)(1) of the Order.

In addition, the complaint and evidence submitted fails to indicate in what manner management refused to consult, confer or negotiate with the National Treasury Employees Union and its Chapter 099 as required by Section 19(a)(6) of the Order.

Based upon the foregoing, I am dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business December 26, 1975.

Sincerely yours,

BENJAMIN B. NAUMOFF
Assistant Regional Director
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-23-76

708

Mr. Adam Wenckus
Executive Vice President
American Federation of Government
Employees, AFL-CIO, Local 2047
P. O. Box 3742
Richmond, Virginia 23234

Re: Defense General Supply Center
Richmond, Virginia
Case No. 22-6518(AP)

Dear Mr. Wenckus:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability, in the above-named case.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that the issue raised in the instant grievance is arbitrable under the provisions of the parties' negotiated arbitration procedure.

Accordingly, your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEFENSE GENERAL SUPPLY CENTER
RICHMOND, VIRGINIA

Activity

and

Case No. 22-6516(AP)

LOCAL 2047, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES (AFL-CIO)

Labor Organization/Applicant

REPORT AND FINDINGS

ON

ARBITRABILITY

Upon an application for a decision on arbitrability having been filed in accordance with Section 205 of the Rules and Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

The Applicant, AFGE, Local 2047, is the exclusive representative of the Activity's general schedule and wage board employees. The parties negotiated an agreement which was approved on January 14, 1972, and which had a two-year duration clause with automatic renewals for two years if neither party during the open period, requested to renegotiate the contract. A supplement to the agreement was approved on September 14, 1973.

On or about August 28, 1975, the Applicant posted on the Activity's bulletin boards the August 28, 1975 issue of its newsletter, the Unionairre, which contained a cartoon depicting the Activity's Commanding Officer holding a gun to the head of an Activity employee. The accompanying article contained several statements which were uncomplimentary to the Activity's leadership. By letter dated September 25, 1975, the Activity filed the grievance against the Applicant, stating that the August 28, 1975 Unionairre contained scurrilous or libelous material, and its posting on bulletin boards was violative of Article XXXVIII of the negotiated agreement. The letter specified the relief sought by the Activity and stated that the Activity would seek arbitration of the dispute if it was not resolved. On October 3, 1975, the Activity requested

that the Union join in requesting the services of an arbitrator. Subsequently, the application considered here was filed by the Union asking that a determination be made regarding the arbitrability of the grievance.

The following provisions of the negotiated agreement are germane to the application:

Article XXXVIII - Bulletin Boards

Section 1. The Employer agrees to permit the Union to utilize up to four square feet of unofficial bulletin board space for posting information to employees. Material suitable for posting on bulletin boards includes, but shall not be limited to, notices concerning Union organizational activities, Union elections and appointments, results of elections and Union meetings. Such posted information shall not violate any law or the security of DGSC or contain scurrilous or libelous material. The Union is responsible for the contents of information posted on bulletin boards.

Article XXVIII Arbitration (In Part)

Section 1. In bringing the matter to arbitration, the Union must present its request to the Commander, DGSC within 15 days after having received the decision under the procedures described in Article XXVII. The Union will be advised in the event the Employer seeks arbitration.

The Applicant contends that the grievance is not arbitrable because the Activity, through its grievance, seeks to impede the Union's right to freedom of speech and expression. Further, the Applicant maintains that the article in the Unionairre was a factual depiction of a particular situation about which the Union expressed its feelings. The Applicant cites the Department of Navy, Naval Air Rework Facility, A/SLMR No. 543, in support of its position.

The Activity maintains that it has not at any time challenged the Union's right to print or distribute material as was found in the August 28, 1975 Unionairre. Rather, in view of the prohibition in Article XXXVIII of the negotiated agreement against the posting of scurrilous or libelous material on bulletin boards, it challenged the Union's posting of the newsletter.

In Department of Navy, Naval Air Rework Facility, cited by the Applicant, certain facts are very similar to those in the instant case - the Activity objected to material in a handbill distributed by the Union, which the Activity considered to be scurrilous or libelous and prohibited by the negotiated agreement. However, in the case cited, the Activity attempted to discipline the Union representatives who had distributed the handbill, and the Assistant Secretary found that the Activity had violated Section 19(a)(1) of the Order by interfering with an activity protected by the Order. The Assistant Secretary adopted the Administrative Law Judge's findings which reiterated the boundaries to a union's protected freedom of expression. Any statements on the part of a union that fall short of "deliberate or reckless untruth," are, under the Order, secure from reprisal; and, to the extent that agency regulations limit a union's protected freedom of expression, such regulations are invalid.

In my view, the Union's argument in the instant case, that the Union's freedom of expression is a higher right not limitable by an arbitrator, overlooks the fact that the Union agreed, by the language in Article XXXVIII of the negotiated agreement, to the imposition of certain restrictions on its freedom of expression, at least with regard to the material posted on the Activity's bulletin boards. The Activity has not attempted to discipline the employees who posted the newsletters, or charged the Applicant with a violation of the Activity's regulations. Instead, the Activity resorted to the bilaterally determined grievance procedure to resolve a dispute over the interpretation and application of the agreement.

Without passing upon the merits of any aspect of the grievance, I find the subject grievance involves the interpretation and application of Article XXXVIII of the parties' agreement, and therefore is subject to arbitration pursuant to that agreement.

Pursuant to Section 205.6(b) of the Assistant Secretary's Rules and Regulations, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary. A copy of such a request must be served on me and all other parties to the proceeding, and a statement of service should accompany the request. A request for review, including a complete statement setting forth the facts and reasons on which the request is based, must be received by the Assistant Secretary of Labor for Labor-Management Relations, U.S. Department of Labor, Office of Federal Labor-Management Relations, Washington, D.C. 20216, no later than close of business February 19, 1976.

Joseph A. Senge, Acting Regional Administrator for Labor-Management Services

DATED: February 4, 1976

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-23-76

709

Mr. Louis E. Schmidt
Grand Lodge Representative
International Association of Machinists
and Aerospace Workers, AFL-CIO
6500 Pearl Road, Suite 200
Cleveland, Ohio 44130

Re: Naval Air Rework Facility
Marine Corps Air Station
Cherry Point, North Carolina
Case No. 40-6658(GA)

Dear Mr. Schmidt:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the Application for Decision on Grievability or Arbitrability in the above-captioned case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the Application herein was not filed timely pursuant to Section 205.2(a) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the Application for Decision on Grievability or Arbitrability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

February 2, 1976 ATLANTA, GEORGIA 30309

Mr. Louis E. Schmidt
Grand Lodge Representative
Local Lodge 2297 of the International
Association of Machinists and Aerospace
Workers, AFL-CIO
6500 Pearl Road, Suite 200
Cleveland, Ohio 44130

RE: Naval Air Rework Facility
Marine Corps Air Station
Cherry Point, North Carolina
Case No. 40-6658(GA)

Dear Mr. Schmidt:

The above-captioned case, initiated by the filing of an Application for Decision on Grievability or Arbitrability under Section 6(a)(5) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as the Application has not been timely filed pursuant to Section 205.2 of the Regulations of the Assistant Secretary.

The Applicant and the Activity are parties to a labor agreement effective for a two-year period from March 9, 1973. That agreement renewed itself and was in effect at all times material herein. It contains an arbitration procedure. Two grievants, employee James Jarvis and employee Robert Baker, were involved in separate grievances; the Applicant has invoked arbitration in both.

On April 7, 1975, the Applicant invoked arbitration in connection with the grievance of Jarvis. On April 25, 1975, the Activity acknowledged the arbitration request. The Activity stated, in its written response, that statutory appeals procedures are available to an employee who feels that he is not properly classified or rated. That response stated, in part, that "matters for which a statutory appeal procedure exists are specifically excluded from the negotiated grievance procedure and therefore are not appropriate for submission to arbitration."

In a letter dated May 15, 1975, the Applicant acknowledged the April 25, 1975, response. It requested that the Activity either consent to arbitration or notify the Applicant stating "it is your final decision not to arbitrate this matter."

In a letter dated May 30, 1975, the Activity reviewed its position on the Jarvis grievance. It specifically alluded to the request for arbitration. The Activity stated, "It is inconceivable that this matter could be presented to arbitration bringing in the classification question . . . " The letter concluded with a separately numbered sentence:

> Based on the above, it is my decision to reject the request for arbitration.

The Applicant did not respond to the May 30, 1975, response until it sent a letter to the Activity on August 4, 1975. The entire text of the letter follows:

> Your above referenced letter was forwarded to our International Headquarters for processing and was returned because it was found to be your final decision.
>
> You are again requested to submit the unresolved matter to arbitration or notify the undersigned clearly designating your reply as your final position.

On August 19, 1975, the Activity referred to the Applicant's August 4 letter and the Activity's May 30 response. As to the August 4 letter, the Activity wrote that the Applicant had requested that the unresolved matter concerning Jarvis be submitted to arbitration or that the Applicant be notified of the Activity's final position. With respect to the May 30 letter, the Activity wrote (in its August 19 letter) that the Applicant had been notified of the Activity's final position in the May 30 letter.

The material facts concerning the Applicant's request for arbitration of the Baker grievance are the same as the facts in the matter involving Jarvis, i.e., the Activity rejected arbitration on Baker in a letter dated April 25, 1975; the Applicant, on May 15, 1975, requested arbitration again or the Activity's final rejection; on May 30, 1975, the Activity again rejected the arbitration request. The Applicant on August 4, 1975, sent the same letter it had sent in the Jarvis case. The Activity's August 19, 1975, response was the same.

The subject application was filed October 17, 1975.

Section 205.2(b) of the Regulations states in part:

> . . . an application for a decision by the Assistant Secretary as to whether or not a grievance is on a matter . . . subject to arbitration under that agreement, must be filed within sixty (60) days after service on the applicant of a written rejection of its grievance on the grounds that the matter . . . is not

subject to arbitration under that agreement: Provided, however, That such prescribed sixty (60) day period for filing an application shall not begin to run unless such rejection is expressly designated in writing as a final rejection.

The Applicant's position is that the final written rejection of the grievance was dated August 19, 1975 (Item 4.B. of the Application).

The Activity's position is that the final rejection was May 30, 1975.

The Activity rejected, in writing, the arbitration requests on two separate occasions: April 25, 1975, and May 30, 1975. The latter rejection was in response to a specific request that the rejection be designated as a "final rejection." The May 30, 1975, rejection is phrased in unequivocal, unambiguous language. The fact that the Activity neglected to use the phrase "final rejection" in its May 30 response does not diminish the undeniable and clear intent that the rejection of the arbitration request was final. I find no magic in the use of the term, "final rejection" when the rejecting party makes its intention unmistakable and engages in no activity which may be deemed inconsistent with such rejection.

Accordingly, as the final rejection was made on May 30, 1975, and as the subject application was not filed until October 17, 1975, far beyond sixty (60) days after the date of the final rejection, the application is untimely filed. As the application was filed more than sixty days after the final rejection of the request for arbitration, it is not timely filed within the meaning of Section 205.2(b) of the Regulations.

I am, therefore, dismissing the application.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business February 17, 1976.

Sincerely yours,

LEM R. BRIDGES
Assistant Regional Director for
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-26-76

710

Mr. Phillip R. Kete
President, National Council of
CSA Locals
American Federation of Government
Employees, AFL-CIO
C/o Community Services Administration
1200 19th Street, N. W.
Washington, D. C. 20506

Re: Community Services Administration
Case No. 22-6467(GA)

Dear Mr. Kete:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability or Arbitrability in the above-named case.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that the grievance herein does not involve a matter concerning the interpretation and application of the negotiated agreement and, therefore, is not arbitrable. In this regard, it was noted that there is no language in the agreement by which management specifically waived its right to determine grade levels or which arguably may have had the effect of making such matters subject to the negotiated grievance-arbitration procedure.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

COMMUNITY SERVICES ADMINISTRATION

Activity/Applicant

and Case No. 22-6467(AP)

NATIONAL COUNCIL OF CSA LOCALS, AFGE, AFL-CIO

Labor Organization

REPORT AND FINDINGS

ON

GRIEVABILITY OR ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Rules and Regulations of the Assistant Secretary, 1/ the undersigned has completed his investigation and finds as follows:

On or about August 28, 1975, the Union filed a grievance over a decision by the Activity to open two Field Representative positions at the GS 9/11 level. The Union contended that they should have been opened at the GS 7/9/11 level so as to allow certain employees the opportunity to apply. On or about September 9, 1975, the Activity responded declaring the decision to be outside the obligation to bargain by virtue of Sections 11(b) and 12(b) of the Order. On or about September 17, 1975, the Union refiled the grievance (at a higher step) contending, inter alia, that the parties' contract provided for a redesign of jobs so that employees with narrower skills can compete for higher level work. On or about October 10, 1975, the Activity again rejected the grievance contending that its action had been protected under Section 12(b) of Executive Order 11491, as amended. On November 4, 1975, the instant application for a decision on grievability and/or arbitrability was filed by the Activity. The applicant seeks a determination as to whether or not the grievance is on a matter subject to the grievance procedure as provided in Article 16 of the agreement between the parties.

1/ Contrary to the Labor Organization's contention, I find that the Applicant does, under Section 205, have standing to file the instant application.

The relevant portions of the contract are Articles 2, 4, 7, 12 and the amendments, Sections 7 and 11. They are quoted, in part, hereafter:

ARTICLE 2. EMPLOYEE RIGHTS

Section 1. Employees covered by this Agreement enjoy the protection of the rights afforded citizens by the Constitution of the United States.

Section 2. The parties agree that they will proceed in accordance with and abide by all Federal laws, applicable state laws, regulations of the Employer, and this Agreement, in matters relating to the employment of employees covered by this Agreement.

Section 9. The parties agree to the following non-discrimination policy.

a. In implementing and carrying out the provisions of this Agreement, neither party will discriminate because of race, color, religion, age, sex, national origin, or political affiliation.

b. The Employer will not require any employee to disclose his race, religion, national origin, or political affiliation.

c. Article 7 of this Agreement dealing with Equal Employment Opportunity sets forth procedures relating to making this policy effective.

ARTICLE 4. EMPLOYER RIGHTS

Section 1. In the administration of all matters covered by the Agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published policies and regulations in existence at the time the Agreement was approved; and by subsequently published policies and regulations of appropriate authorities. 2/

2/ Examples of some of the appropriate authorities are: Office of Management and Budget, Civil Service Commission, General Accounting Office, General Services Administration and Federal Labor Relations Council.

Section 2. Management officials of the agency retain the right, in accordance with applicable laws and regulations, to direct employees of the agency; hire, promote, transfer, assign, and retain employees in positions within the agency and to suspend, demote, discharge, or take other disciplinary action against employees; to relieve employees from duties because of lack of work or for other legitimate reasons; to maintain the efficiency of the Government operations entrusted to the agency; to determine the methods, means, and personnel by which such operations are to be conducted, and to take whatever actions may be necessary to carry out the mission of the Office of Economic Opportunity in situations of emergency.

Should a management official feel that it is necessary to abrogate any provision of this or any supplemental agreement in order to meet an emergency situation, he shall immediately communicate with the Deputy Director advising him of all pertinent facts. The Deputy Director shall consider the situation. If, in his judgment, an emergency of such gravity exists, he shall advise the Union as soon as possible by notifying the National President, American Federation of Government Employees, of the actions required to carry out the mission of the Employer in this emergency situation. The Deputy Director shall confirm his conversation in writing to the Union as soon as practical, should the Union dispute his actions.

Section 3. Although the Employer is not required to consult or negotiate with respect to any matter which extends to such areas of discretion and policy as the mission of the Office of Economic Opportunity; its budget; organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organization unit, work project or tour of duty; the technology of performing its work; or its internal security practices, the Employer agrees that in order to foster a positive responsible relationship it may consult with the Union on these matters to the maximum extent it considers to be in its interest.

ARTICLE 7. EQUAL OPPORTUNITY

Section 1. There shall be absolutely no discrimination of any kind against any employee on account of sex, age, race, color, creed, religion or national origin.

Section 2. The Employer and the Union agree that each category of employees Grades 1-7, Grades 8-12, and Grades 13 and over, within each Regional Office will, as a minimum goal, reflect the minority population of that Region. The Employer and the Region agree that each category of employees, Grades 1-7, Grades 8-12, Grades 13 and over, within Headquarters will also, as a minimum goal, reflect the minority population of the country as a whole. Regional Offices and Headquarters will promote with these goals in mind.

Section 3. The parties agree that as a goal, the percentage of women in each category of employees shall be at least the percentage of women in the labor force.

Section 4. The parties agree that Sections 2 and 3 in no way are to be interpreted to encourage a decrease in the present percentage of any minority through future personnel actions.

Section 5. To the extent possible within 60 days of this Agreement, the Employer shall establish goals and timetables for each Region and Headquarters to meet the above-mentioned agreements. These goals shall be communicated to each employee.

Section 6. It is agreed that programs will be established at Headquarters and each Regional Office for the purpose of identifying prospective qualified women and minority applicants for promotion. The concepts of the Employer's Cross-Over Program and Low-Income Program will be maintained and expanded.

ARTICLE 12. MERIT PROMOTION

Section 1. The objective of this article is to assure that OEO is staffed by the best qualified candidates available and to assure that employees have an opportunity to develop and advance to their full potential according to their capabilities. To this end this article is designed:

a. To bring the attention of management on a timely basis highly qualified candidates from whom to choose;

b. To give employees an opportunity to receive fair and appropriate consideration for higher level jobs;

c. To assure the maximum utilization of employees;

d. To provide an incentive for employees to improve their performance and develop their skills, knowledge, and abilities;

e. To provide attractive career opportunities for employees;

f. To avoid favoritism and pre-selection or the appearance of them; and,

g. To ensure that violations of this article do not occur either by error or design.

AMENDMENT

Section 11. Filling Vacancies

The parties agree that all vacancies will be posted and that all vacancies in the competitive service above the entry level will be filled with in-house candidates, where possible, with the exception of policy and supervisory positions or when there is an emergency which precludes use of the Merit Promotion System. Whenever management determines such an emergency exists, it will notify the union of the reasons in advance. During FY '74 employees transferred from OEO will be considered in-house candidates for this purpose. Article 12, Section 4A of the contract is hereby amended.

Section 7. Crossover

The Agency will continue to provide professional growth for all employees, with special emphasis on lower grade employees. Opportunities will be provided for employees who wish to change careers, for example, from clerical to professional. A significant number of slots will be placed in reserve for this purpose, not less than 3% of the Agency's authorized ceiling. The Grade Review Board will make recommendations as to changes in this goal.

The Applicant contends that the determination as to what grade level a position will be posted and/or filled is reserved to management by the terms of Section 12(b) of the Order. Consequently, the grievance is not subject to the negotiated grievance procedure.

The Union considers the subject of the grievance to fall under Section 11(b) rather than Section 12(b). Because of this the Union contends that the Activity may, in its discretion, bargain on the issue and that such agreements are enforceable under the negotiated grievance procedure. The Union further contends that the contract provides for the redesign of jobs, and that under the circumstances the Activity's decision to fill the positions at the 9/11 level was in violation of the contract.

In agreement with the Union, I find that the subject of the grievance, the grade level of a position, is more appropriately within the ambit of Section 11(b) rather than Section 12(b). Thus, the Activity had the option of bargaining on the subject. I also find that nothing in the contract indicates that the Activity did exercise this option and bargain on the determination of grade level of positions. In various provisions of the contract, management has committed itself to supporting employees'professional advancement; and restructuring job content is, indeed, one way of achieving the

goals set forth in the contract. I do not find that any provision of the contract, either standing alone or in concert with other provisions, requires the Activity to bargain on the grade level at which particular jobs will be filled. Thus, the Activity has retained its prerogatives with regard to determining which jobs, if any, will be redesigned. Moreover, I find that the various statutes, regulations and policies referenced in the agreement have not abrogated the retention of this particular "right" and rendered a matter falling under Section 11(b) (i.e., the determination as to the grade of a position) negotiable.

In summary, I find that the subject grievance is on a matter falling within the ambit of Section 11(b) of the Order and that the Activity has not waived its option of retaining the authority to make determinations as to the grade level at which positions will be posted and filled. Thus, I find that the grievance over the grade levels of the two Field Representative positions is not subject to the negotiated grievance procedure and, therefore, not grievable or arbitrable.

Pursuant to Section 205(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Office of Federal Labor-Management Relations, Washington,D.C. 20216, no later than close of business February 19, 1976.

DATED: February 4, 1976

Joseph A. Senge, Acting Regional Administrator for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-26-76

Mr. Phillip R. Kete
President, National Council of CSA Locals, AFGE, AFL-CIO
c/o Community Services Administration
1200 19th Street, N. W.
Washington, D. C. 20506

711

Re: Community Services Administration
Case No. 22-6320

Dear Mr. Kete:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint in the above-named case.

Section 205.13(a) of the Assistant Secretary's Regulations provides that: "An applicant who has received a final decision on his application in the form of either of the following: (1) a Regional Administrator's report and finding that the matter covered by the application is not subject to the grievance procedure in an existing agreement, and no request for review has been filed; or (2) a decision by the Assistant Secretary to that effect, may file a complaint alleging an unfair labor practice under section 19 of the order which is based on the same factual situation which gave rise to the grievance covered by the application." In this regard, I interpret that part of Section 205.13(a), which permits the filing of an unfair labor practice complaint upon the issuance of a decision by a Regional Administrator or the Assistant Secretary, to permit also such a filing after the Federal Labor Relations Council has issued its decision on a petition for review of the Assistant Secretary's decision. Moreover, contrary to the Acting Regional Administrator, for purposes of filing under this Section, I view the term "applicant" as used in Section 205.13 of the Regulations to include either party to the negotiated agreement. Accordingly, under the particular circumstances of this case, I find that the 30 day time limit for the filing of an unfair labor practice charge began to run from the date of the Federal Labor Relations Council's decision in FLRC No. 74A-94, which issued on June 10, 1975. As Section 205.13(b)(1) of the Regulations requires that the charge required to be filed must be filed within thirty (30) days of the final decision (in this case the above cited decision of the Council), I find that the

time for filing the pre-complaint charge started to run from the date of the issuance of the Council's decision as distinguished from the date of "service" of such decision on the parties. In the absence of a specific provision for "service" in Section 205.13, Section 206.2 of the Regulations is considered inapplicable to this situation. Rather, the provisions of Section 206.1 of the Regulations are considered applicable. Thus, as the Council's decision issued on June 10, 1975, in order to be timely filed, an unfair labor practice charge in this matter would have to have been filed by July 10, 1975. As the charge herein was not filed until July 11, 1975, I find it to be untimely.

Accordingly, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

October 20, 1975

(Cert. Mail No. 701918)
Mr. Phillip R. Kete, President
National Council of CSA Locals,
AFGE, AFL-CIO
c/o Community Services Administration
1200 19th Street, NW
Washington, D.C. 20506

Re: Community Services Administra
Case No. 22-6320(CA)

Dear Mr. Kete:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation revealed that on March 11, 1974, you filed a grievance concerning the Agency's failure to comply with the January 31, 1974 award of Arbitrator William Edgett. This grievance was the subject of an application filed by the Agency on June 19, 1974, requesting an arbitrability determination on the issue, "May the Agency implement an arbitrator's award which it questions as to its legality"? On August 2, 1974, the Acting Assistant Regional Director determined that the question was not arbitrable and on November 25, 1974, the Assistant Secretary denied your Request for Review in that matter. The Federal Labor Relations Council denied your petition for review of the Assistant Secretary's decision on June 10, 1975.

By letter dated July 11, 1975, you filed a charge against the Respondent alleging violations of Sections 19(a)(1) and (6) of the Executive Order on the basis that the Respondent failed to appeal the arbitration award to the Federal Labor Relations Council or comply with it in a timely fashion. I find that your charge was not timely filed within the meaning of Section 203.2 of the Regulations since the charge was filed more than six (6) months after the occurrence of the alleged unfair labor practice.

Apparently, you also take the position that Section 205.13 of the Rules applies since a final decision that the grievance was not subject to the grievance procedure in an existing agreement was not made until June 10, 1975. The decision of June 1975 was that of the Council; the Assistant Secretary's decision was November 1974. The applicable Regulation reads that an applicant for a decision on grievability must receive a final decision on his application (emphasis supplied) and you were not the applicant. Nevertheless, even if the Regulations can be read as permitting you to file an unfair labor practice charge to be filed after a final decision, the investigation shows that your charge was not timely filed within the meaning of Section 205.13 since more than thirty (30) days had elapsed between the decision of the Assistant Secretary and the filing of the charge.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business November 4, 1975.

Sincerely,

Eugene M. Levine
Acting Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-28-76 712

Mr. Richard Fleming
Director, UniServ
Overseas Education Association
Frankfurt Military Community
Box 63
APO New [illegible] 09710

Re: U. S. Dependents School
European Area
Case No. 22-6498(CA)

Dear Mr. Fleming:

This is in connection with your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (2), (5) and (6) of Executive Order 1149[illegible] as amended.

I find that your request for review is procedurally defective since it was filed untimely. In this regard, it was noted that on March 15, 1976, you were granted an extension of time to file a request for review in the instant case. As you were advised therein, a request for review of the Acting Regional Administrator's decision had to be received by the Assistant Secretary not later than the close of business April 7, 1976. Your request for review, dated April 7, 1976, was received subsequent to that date and, therefore, was clearly untimely.

Accordingly, the merits of the subject case have not been considered, and your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U[illegible]TED STATES DEPARTMENT OF [illegible]ABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

February 12, 1976

Mr. Richard Fleming
OEA Inlserv-Director
Overseas Education Association
Frankfort Military Community
Box 63
APO New York 09710
(Cert. Mail No. 782149)

Re: U.S. Dependents Schools,
European Area
Case No. 22-6498(CA)

Dear Mr. Fleming:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted.

The Complainant alleged that U.S. Dependents Schools, European Area (USDESEA) violated Sections 19(a)(1)(2)(5) and (6) of the Executive Order by refusing to supply substitute teachers for members of the Overseas Education Association (OEA) consultation team while they were engaged in consultation with the Respondent pursuant to Article XXII of the OEA/USDESEA contract.

The investigation revealed that on or about September 22-23, 1975 representatives of OEA met with the Respondent in a regularly scheduled consultation session. Of the OEA representatives present, (Lyle Mortenson, Beverly Larson, Dan Seiden, Sarah Bican and Lynne Holland), Mortenson, Larson and Seiden were not supplied with substitutes to cover their school functions. However, Bican was provided with a substitute. On or about October 4, 1975, Lyle Mortenson filed an unfair labor practice charge alleging that the Activity's failure to supply substitutes was in violation of the Order. He contended that the Activity's actions (1) resulted in the coercion, interference and restraint of those employees in their exercise of rights assured by the Order, (2) discouraged employees from union membership, (3) denied recognition to OEA and (4) denied OEA the opportunity to consult. On November 18, 1975, you filed a complaint on behalf of Mortenson (the Complainant) alleging that the Respondent had violated the above-cited sections of the Order.

From the evidence submitted, it is apparent that USDESEA has a policy of not supplying substitutes to resource educators (by your terminology) or specialists (by the Activity's terminology). You contend that USDESEA had observed a practice of supplying substitutes to OEA consultation team members who were engaged in consultation. However, of the three instances you cite supporting this contention, two (the consultations during October and November 1975) occurred after the event which gave rise to the instant complaint. The third was the September 1975 consultation meeting from which the instant complaint arose. At this meeting you complain that three of the participants were denied substitutes. Thus, for purposes of the instant complaint, I cannot consider the examples you cite as evidence of a past practice binding the Respondent. In fact, it appears that prior to the charge the Respondent's actions had generally been dictated by its policy as cited above. The evidence submitted indicates that the Respondent had, prior to the charges, consistently denied the Complainant a substitute when he had been absent from school for any reason and had consistently supplied Bican with one in her absences.

It is my opinion that nothing in the Executive Order requires the Respondent to supply the consultation team members with substitutes (as a matter of fact Sections 11(b) and 12(a) would reserve the decision of whether or not to utilize substitutes to the Respondent.) Therefore, I am of the opinion that the Respondent's regulations and policy would govern.

No evidence has been presented to show that any disparate application of this regulation was based on union membership (or activity) considerations. No evidence has been presented to show that any agent of the Respondent coerced, interfered with or restrained any employee with regard to exercise of rights assured under the Order. Moreover, you allege that any coercion, interference or restraint with respect to exercise of rights under the Order was done by students, parents and other teachers and not by agents of the Respondent. Nor has evidence been submitted to show that the Respondent refused to consult, confer, negotiate as required by the Order.

With respect to the allegation that the Respondent violated Sections 19(a)(5), the actions involved in your complaint relate to conduct of the bargaining relationship and 19(a)(5) pertains to the grant of appropriate recognition. 1/ The investigation has not disclosed nor have you alleged that the Respondent has withdrawn recognition.

1/ Army School Training Center, Fort McClellan, Alabama, A/SLMR No. 42.

In view of the foregoing, I find that a reasonable basis for the complaint has not been established.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Acting Regional Administrator as well as the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary within ten days. For purposes of service of this dismissal, you may consider the ten days to start running from the date it is received by you or your representative.

Sincerely,

Joseph A. Senge
Acting Regional Administrator
for Labor-Management Services

cc: Mr. Lyle P. Mortenson
Kaiserslautern Elementary School
APO New York 09227

Mr. Marty Frantz
Personnel Management Specialist
USDESEA
APO New York 09164

Mr. Sanburn Sutherland
Directorate of Civilian Personnel
Labor & Employee Relations Department
Department of the Army
The Pentagon
Washington, D.C. 20310

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4-28-76

713

Ms. Marie C. Brogan
National Vice President, Region 6
National Federation of Federal
Employees
P. O. Box 1935
Vandenberg AFB, California 93437

Re: Navy Commissary Store
Case Nos. 72-5425
72-5426 and
72-5427

Dear Ms. Brogan:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaints in the above-named cases, alleging violations of Section 19(a)(1) of the Executive Order.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in the subject cases are unwarranted as a reasonable basis for the complaints has not been established. In regard to the Regional Administrator's determination in Cases Nos. 72-5426 and 72-5427, see particularly General Services Administration, Region 5, Public Buildings Service, Chicago Field Offices, A/SLMR No. 528; Federal Aviation Administration, Muskegon Air Traffic Control Tower, A/SLMR No. 534; and Department of the Army, Watervliet Arsenal, A/SLMR No. 624. With regard to those matters raised for the first time in your request for review (i.e., your assertion that the Activity also violated Sections 19(a)(2) and (6) of the Executive Order), it has previously been held that such matters will not be considered by the Assistant Secretary at the request for review stage of the proceeding (see attached Report on Ruling of the Assistant Secretary, Report No. 46.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the subject complaints, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

December 19, 1975

Mr. Frank J. Carpenter, President
National Federation of Federal Employees,
Local 63
2762 Murray Ridge Road
San Diego, California 92123

Re: Navy, Commissary Store
NFFE, Local 63
Case Nos. 72-5425, 72-5426
and 72-5427

Dear Mr. Carpenter:

The above captioned cases alleging a violation of Section 19 of Executive Order 11491, as amended, have been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaints in the subject cases have not been established. With respect to Case No. 72-5425, it is noted that the requirement of signing a leave slip on the occasion of your visiting a different location during work hours was for the stated purpose of accounting for your time which was charged to administrative leave. It is further noted this requirement was imposed by an individual who was substituting for the regular Activity representative who handles the granting of leave and was an isolated departure from the normal method of accounting for your time. In these circumstances, and since there is no evidence that the action was taken as a form of harrassment, it is concluded that further proceedings are not warranted.

With respect to Case No. 72-5426 and Case No. 72-5427, it is concluded that these cases involve contract interpretation. In this regard, it is noted that Section 6 of the negotiated grievance procedure provides that an employee in the informal step will normally be represented by the steward servicing his area. The investigation discloses that the Activity interprets this provision as limiting the informal investigation of a potential grievance to the immediate steward while Complainant contends this provision of the agreement does not preclude an employee from requesting any steward or union representatives from representing him. In view of this apparent disagreement over the meaning of this contractual provision, and since there is no past practice of the union president being granted official time inorder to confer with employees in outlying areas concerning potential grievances, it is concluded that further proceedings are not warranted.

I am, therefore, dismissing the complaints in the subject cases.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210. A copy of the request for review must be served on the undersigned Regional Administrator as well as the activity and any other party. A statement of service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business January 5, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-3-76

Mr. Joseph Girlando
National Representative
American Federation of Government
Employees, AFL-CIO
300 Main Street
Orange, New Jersey 07050

714

Re: U. S. Army Training Center
Fort Dix, New Jersey
Case No. 32-4343(CA)

Dear Mr. Girlando:

This is in connection with your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, alleging a violation of Section 19(a)(1) of Executive Order 11491, as amended.

I find that your request for review is procedurally defective since it was filed untimely. In this regard, it was noted that the Regional Administrator issued his decision in the instant case on March 24, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business April 9, 1976. Your request for review, bearing an Orange, New Jersey, postmark dated April 8, 1976, was, in fact, received by the Assistant Secretary subsequent to April 9, 1976. Under these circumstances, I find that the request for review in this matter was filed untimely.

Accordingly, the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

Suite 3515
1515 Broadway
New York, New York 10036

In reply refer to Case No. 32-4343(CA)

March 24, 1976

Joseph Girlando, National Representative
American Federation of Government Employees,
AFL-CIO
300 Main Street
Orange, New Jersey 07050

Re: U.S. Army Training Center and
Fort Dix
Fort Dix, New Jersey

Dear Mr. Girlando:

The above-captioned complaint has been investigated and considered carefully. It does not appear that further proceedings are warranted, inasmuch as a reasonable basis for the complaint has not been established.

Your complaint alleges that the U.S. Army Training Center and Fort Dix refused to grant official time for the purpose of negotiating a collective bargaining agreement to William Minney, President of Local 1999, American Federation of Government Employees, AFL-CIO, as permitted by Section 20 of the Order. Your complaint further alleges that by denying such official time, the Respondent interfered with, restrained, and coerced Mr. Minney in the exercise of rights assured by the Order, in violation of Section 19(a)(1).

The Respondent has maintained, in response to the complaint, that it did not have either the obligation or the authority to grant official time to Mr. Minney inasmuch as the negotiations in question were being conducted between Local 1999 and a separate command, the Mid-Atlantic Area Exchange of the Army and Air Force Exchange Service. 1/ In addition, it is the Respondent's contention that no agreement between the negotiating parties was reached

1/ Minney is an employee of the U.S. Army Training Center and Fort Dix.

providing for official time for employee representatives of Local 1999, a requirement it says is prescribed by Section 20. 2/

Under the circumstances, I find, based on the evidence you have furnished in support of your complaint, that the failure of the Respondent to grant official time to Mr. Minney does not appear to contravene the requirements of Section 20, and as such cannot be viewed as violative of Section 19(a)(1). Thus, although you contend that Section 20 would require that Mr. Minney be granted official time in order to take part in the negotiations, I can find nothing in the language of that section that would indicate such a requirement would be placed upon an agency other than one with which the negotiations are being conducted. 3/ In my view, the intent of Section 20 was to provide for official time when employees of an agency meet with the management of that agency for the purpose of negotiating an agreement. In addition, Section 20 provides for official time only when the negotiating parties have reached an agreement specifically authorizing such time for qualified individuals. Thus, although the section of the Order you have relied on as a basis for your complaint sets forth specific criteria which must be met before official time can be granted, you have supplied no evidence, beyond a mere assertion of a violation, that the Respondent's conduct in this instance was at variance with the provisions of Section 20, or was violative of Section 19(a)(1).

I am, therefore, dismissing the complaint in its entirety.

2/ Section 20 of the Order provides, in part; "Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements..."

3/ Section 2(f) of the Order defines Agency Management as the agency head and all management officials, supervisors and other representatives of management having authority to act for the agency (emphasis underscored) on any matters relating to the implementation of the agency labor-management relations program established under this Order.

Joseph Girlando, National Representative
AFGE, AFL-CIO Case No. 32-4343(CA)

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, not later than the close of business April 9, 1976.

Sincerely yours,

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

CC: William Minney, President
Local 1999, AFGE
Bldg. 5734
Ft. Dix, New Jersey 08640

J.R. Tomad, Civilian Personnel Office
Dept. of the Army
HDQS. USA Training Center & Ft. Dix
Ft. Dix, New Jersey 08640

(blind) NWKAO

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-17-76

Roger P. Kaplan, Esq.
General Legal Services Division
Room 4568, Internal Revenue Service
Washington, D. C. 20224

715

Re: Internal Revenue Service
Washington, D. C.
Case Nos. 22-6484(UC)
22-6486(UC)

Dear Mr. Kaplan:

I have considered carefully your request for review seeking reversal of the Decision and Order of the Acting Regional Administrator in the above-entitled matter, or, in the alternative, seeking a bifurcated hearing on the subject petitions.

In his Decision, the Acting Regional Administrator denied your motion to dismiss the petitions herein. Your motion to dismiss was based upon your assertion that the Petitioner, the National Treasury Employees Union, lacked standing to file the subject petitions. The Acting Regional Administrator determined that the question of the standing of the Petitioner herein would be considered, together with other issues the parties may raise, in a hearing to be directed upon conclusion of the prescribed posting period.

You cite as authority for the filing of your request for review in this matter, Sections 202.2(h)(6) and 202.6(d) of the Assistant Secretary's Regulations. I find, however, that no basis exists under the Regulations for the filing of a request for review, under the circumstances herein, where review is sought of a Regional Administrator's denial of a motion to dismiss a petition. Thus, while Section 202.2(h)(6) of the Assistant Secretary's Regulations provides for the filing of a request for review of a report and findings with respect to a petition to consolidate, that Section of the Regulations also states, in part, "Provided, however, That where the Regional Administrator . . . determines . . . to issue a notice of hearing, no such report and findings need be issued and such action shall not be subject to review by the Assistant Secretary."

Similarly, Section 202.6(d) of the Assistant Secretary's Regulations provides for a request for review only in situations involving the dismissal of a petition or the denial of an intervention. See also, in this regard, Report on Decision No. 8, copy attached, which states that no provision is made for the filing of a request for review of a Regional Administrator's action in denying a motion to dismiss a petition.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's denial of your motion to dismiss, is denied. Moreover, under the circumstances herein, I find that insufficient justification exists to support your alternative request that a bifurcated hearing be held in this matter. Accordingly, your motion for a bifurcated hearing also is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

INTERNAL REVENUE SERVICE

Agency

and

Cases Nos. 22-6484(UC)
22-6486(UC)

NATIONAL TREASURY EMPLOYEES UNION

Petitioner

DECISION AND ORDER

The Internal Revenue Service in both cases has moved for the dismissal of the petitions on the basis that the National Treasury Employees Union lacks standing under Section 202.1(f) of the Rules and Regulations of the Assistant Secretary to file in its own name and in its own behalf said petitions. The premise underlying the Motion is that the NTEU does not hold exclusive recognition or certification in many of the units proposed to be consolidated and the Agency argues that the Regulations and the Report and Recommendations of the Federal Labor Relations Council (FLRC) on the Amendment of Executive Order 11491, as amended, dictate that only a labor organization or labor organizations holding recognition or certification may petition to have their recognized or certified units consolidated. And since this is so, the NTEU may not petition since most of the units sought to be consolidated are not covered by a recognition or certification to which it is a party.

The Petitioner argues on the other hand that by past practice the NTEU effectively has dealt with the Agency as the representative of the employees in the units sought to be consolidated; it also avers that by resolution at national conventions, the NTEU has been authorized to seek consolidation; that apart from the resolutions NTEU has been authorized to file the petitions; and finally that labor policy in the Federal Sector permits the filing of a consolidation petition by an International Union. 1/

1/ Veterans Administration, FLRC No. 73A-9.

The Agency points out that the Regional Administrator in the Atlanta Region dismissed a Unit Consolidation Petition which was filed by one local union for a consolidated unit which included a unit for which another local union of the same national union was the exclusive representative. The petition was dismissed because it was not jointly made, did not indicate the acquiescence of all labor organizations diling on their behalf, and the Regulations of the Assistant Secretary do not permit the certification of one local union when more than one local is involved. 2/

In my opinion, the Navy Exchange case decided by the Regional Administrator is not controlling since the decisional facts are different. There one local was attempting to "freeze out" a co-equal component of the same international. In the case at bar an International Union is filing a petition for and on behalf of its component parts. The FLRC has recommended in its report that the consolidation of smaller units into larger units should be facilitated. The Internal Revenue Service has read literally the language in the Regulations and Report that only recognized or certified labor organizations are permitted to file unit consolidation petitions. I must reject that premise as the basis for dismissing the instant petitions ab initio without the direction of a hearing on all the issues, including authority to file. The Petitioner herein has represented that it has the authority, for and on behalf of its local chapters to file a consolidated petition. I am not prepared, nor do I intend to go behind the representation of the NTEU as to its authority. The legal question as to whether the NTEU may petition in the circumstances herein may be taken up and heard, together with other issues the parties may raise, in a hearing to be directed upon conclusion of the posting period.

IT IS HEREBY ORDERED that the Motion be, and it hereby is,

DENIED.

DATED: March 12, 1976

Eugene M. Levine, Acting
Regional Administrator for
Labor-Management Services

Philadelphia Region

2/ Navy Exchange. 42-3115(UC), Jan. 6, 1976. The president of Local Chapter 14, NTEU, wired his objection to the Consolidation Petition. Local Chapter 14 jointly with Local Chapter 36 is the recognized representative of the employees of the St. Louis District Office of the Agency. (The St. Louis office is one of the 63 sought to be consolidated.)

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-17-76

Mr. William A. Luster
1011 Meadow View Drive
Gallatin, Tennessee 37066

716

Re: Tennessee Valley Authority
Knoxville, Tennessee
Case No. 41-4643(DR)

Dear Mr. Luster:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the petition in the above-captioned case.

In agreement with the Regional Administrator, and based on his reasoning, I find that dismissal of the subject petition is warranted, as the Tennessee Valley Authority is now excluded from the coverage of Executive Order 11491, as amended.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the petition, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

February 18, 1976

Mr. William A. Luster
1011 Meadow View Drive
Gallatin, Tennessee 37066

RE: Tennessee Valley Authority
Knoxville, Tennessee
Case No. 41-4643(DR)

Dear Mr. Luster:

The above-captioned case seeking an election to determine whether certain employees of Tennessee Valley Authority (TVA) no longer wish to be represented by an exclusive representative has been considered.

On January 30, 1976, President Ford signed Executive Order 11901. That Order provides for the amendment of Section 3(b) of Executive Order 11491, as amended, by adding to the exclusions in Section 3(b), "The Tennessee Valley Authority." Therefore, Section 3(b)(6) now reads:

This Order does not apply to The Tennessee Valley Authority.

In light of the President's Order, no further action is warranted.

I am, therefore, dismissing the petition.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business March 4, 1976.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-17-76

Mr. Carmen R. Delle Donne
President, AFGE, Local 2578
National Archives and Records Service
Room 2E, 8th and Pennsylvania Avenue, N.W.
Washington, D. C. 20408

717

Re: General Services Administration
National Archives and Records
Service
Case No. 22-6297(CA)

Dear Mr. Delle Donne:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Sections 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based essentially on his reasoning, I find that further proceedings in this matter are unwarranted. In reaching this disposition, it was noted particularly that the evidence establishes that none of the actions complained of herein occurred within nine months prior to July 31, 1975, the filing date of the subject complaint. Consequently, the complaint in this respect is untimely, as Section 203.2(b)(3) of the Assistant Secretary's Regulations requires, among other things, that a complaint must be filed within nine months of the occurrence of the alleged unfair labor practice.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

September 17, 1975

Mr. Carmen R. Delle Donne
President
American Federation of Government
Employees, Local 2578
National Archives and Records Service
National Archives Building, Room 2E
8th and Pennsylvania Avenue, NW
Washington, D.C. 20408
(Cert. Mail No. 701857)

Re: General Services Administration
National Archives and Records
Service
Case No. 22-6297(CA)

Dear Mr. Delle Donne:

The above-captioned case alleging a violation of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You allege that, during the past two years, the Respondent has altered the staffing pattern in the Industrial and Social Branch (NNFS) of the National Archives by adding five professional positions, two at the Journeyman Level, GS-11, and three above the Journeyman Level, GS-12. These newly created positions were filled through lateral transfer and by hiring from the Civil Service Commission register rather than by promoting employees already in the Branch. You contend that the positions were filled in this manner by the Respondent to prevent the four union officers who work in that Branch from being promoted in violation of 19(a)(1) and (2) of the Order. You also contend that the reassignments in question constituted a reorganization and that the Respondent failed to meet and confer with the exclusive representative on the adverse impact of the reorganization in violation of Section 19(a)(6) of the Order.

The five reassignments you complain of are the following:

1. On February 18, 1973, Jerry N. Hess (GS-1420-12) was reassigned from the Office of Presidential Libraries to the Industrial and Social Branch.

2. On October 1, 1973, Thomas Lane Moore was hired to fill a newly created (GS-1420-11) position.

3. On April 28, 1974, Debra Newman (GS-1420-11) was reassigned from the Social Projects Division to the Industrial and Social Branch.

4. On June 9, 1974, Mary Jane Dowd (GS-1420-12) was reassigned from the Special Projects Division.

5. On March 27, 1975, union officers in the Industrial and Social Branch learned of a decision to reassign Charles Dewing from the Civil Archives Division to a newly created professional archivist position in the Industrial and Social Branch above the Journeyman Level (GS-1420-12), the reassignment to take effect at the beginning of the fiscal year 1976.

Section 203.2(3) of the Rules and Regulations of the Assistant Secretary provides:

> "A complaint must be filed within nine (9) months of the occurrence of the alleged unfair labor practice or within sixty (60) days of the service of a respondent's written final decision on the charging party, whichever is the shorter period of time."

The unfair labor practice complaint was filed on July 31, 1975, with the LMSA Washington Area Office.

I find that the violations alleged to have occurred on February 18, 1973, October 1, 1973, April 28, 1974 and June 9, 1974 are untimely because the events occurred more than nine (9) months prior to the date the complaint was filed.

With respect to the remaining allegation you presented no evidence to support your allegation that the Respondent's reassignment of Charles Dewing from the Civil Archives Division to the Industrial and Social Branch, effective the beginning of fiscal year 1976, was and is to keep from promotion union officers who work in the Branch. You presented no evidence to show an anti-union or anti-union officer attitude or bias by the Respondent.

Furthermore, the evidence does not support your contention that there has been a reorganization of the Branch and that the Respondent failed to meet and confer on the adverse impact of the reorganization; a reassignment of three individuals and the creation of two positions over a 2 1/2 year period does not constitute evidence of a reorganization.

You have not established a reasonable basis that a 19(a)(1), (2) or (6) violation has occurred.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business October 2, 1975.

Sincerely,

Kenneth L Evans

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-17-76

718

Mr. Edward C. Maddox
President, Local 987
American Federation of Government
Employees, AFL-CIO
P. O. Box 1079
Warner Robins, Georgia 31093

Re: Warner Robins Air Logistics
Center
Robins Air Force Base
Case No. 40-6798(CA)

Dear Mr. Maddox:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, alleging violations of Sections 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based essentially on his reasoning, I find that further proceedings in this matter are unwarranted on the basis that the subject complaint was filed untimely. In this regard, it is noted particularly that, while the Activity did not use the express words "final decision" in its "rejection" letter dated October 21, 1975, it is clear that you considered the letter as such, and so designated the letter as a final decision in paragraph 4(b) of the complaint form. Therefore, as the complaint in this matter, filed December 29, 1975, was not filed within 60 days of the Activity's written final decision on the charge, in accordance with Section 203.2(b)(3) of the Assistant Secretary's Regulations, I find that the complaint was filed untimely.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

March 1, 1976

Mr. Edward C. Maddox, President
Local 987
American Federation of Government
Employees, AFL-CIO
Post Office Box 1079
Warner Robins, Georgia 31093

RE: Warner Robins Air Logistics Center
Robins Air Force Base, Georgia
Case No. 40-6798(CA)

Dear Mr. Maddox:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as the complaint has not been timely filed pursuant to Section 203.2 of the Regulations of the Assistant Secretary.

Investigation discloses that a pre-complaint charge was filed with the Respondent by your letter dated September 18, 1975. Respondent answered the charge on October 21, 1975, by letter in which it stated that Section 19(d) of the Order precluded consideration of the issue in the charge, and in the final paragraph stated:

> Therefore, your charge of an unfair labor practice is rejected.

You received Respondent's October 21 letter on October 24, 1975.

While the Respondent's October 21 letter is not expressly designated as a final decision, the Respondent clearly indicated its intent to reject the charge of an unfair labor practice. Failure to use the required words "final decision" will not extend the time for filing a complaint when the parties take no further action to pursue investigation after a stated intention to reject the charges.

Thus, in the absence of any action by Respondent which might reasonably be viewed as inconsistent with its unambiguous rejection of the unfair labor practice charge, I find that Respondent's October 21, 1975, decision constituted a final decision.

Having found that the October 21, 1975, letter constitutes a final decision, and inasmuch as the complaint was filed on December 29, 1975, and thus not within sixty (60) days of the final decision, the complaint has failed to meet the requirements of Section 203.2(b)(2) of the Regulations of the Assistant Secretary. The complaint is, therefore, untimely filed.

Investigation further discloses that a grievance was filed by Nedra Bradley, steward, under agency procedures as prescribed in Air Force Regulation 40-771. The grievance appealed a reprimand given to Bradley on August 14, 1975. The reprimand which gave rise to the grievance concerned Bradley's alleged misconduct on June 11, 1975, when she attempted to reach a unit employee on the telephone. Bradley allegedly left the phone off the hook for two to five minutes after she was not allowed to speak to the employee. The Bradley grievance was processed by the Respondent's Personnel Office, accepted by the deciding official for adjustment in accordance with agency regulations and then forwarded to an appeals review office in Dayton, Ohio. Bradley withdrew her grievance prior to a decision by the Dayton Appellate Review Office.

Complaint alleges that Bradley was interfered with, restrained, and coerced in violation of 19(a), (1), (2) and (4) when she was refused to be allowed to represent Selma Flanders over the telephone on June 11, 1975, and on July 31, 1975, when Bradley was given a reprimand as a result of her actions to represent employees as an officer of complainant labor organization.

With respect to the allegation that Respondent has violated Section 19(a)(4) of the Order, that Section deals with discipline or discrimination against an employee for filing a complaint or giving testimony under the Order. There is no evidence that Bradley or any other employee filed a complaint under the Order. Filing a grievance is not filing a complaint under the Order; therefore, there is no reasonable basis for the 19(a)(4) complaint.

With respect to the 19(a)(1) and (2) allegations, I find that the complaint is barred by Section 19(d) of the Order. Bradley grieved the reprimand which resulted from the events of June 11, 1975, concerning the use of the telephone. The events of June 11, 1975, and the issuance of the reprimand letters to Bradley are the same as the basis for the complaint. Issues which have been raised in a grievance procedure may not be raised under both that procedure and the unfair labor practice procedure in Section 19. Inasmuch as the issues which are the basis for the complaint were raised under a grievance procedure, the matter may not be raised as an unfair labor practice.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business March 16, 1976.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-20-76

719

William B. Peer, Esq.
Barr & Peer
Suite 1002
1101 17th Street, N. W.
Washington, D. C. 20036

Re: Las Vegas Control Tower
Federal Aviation Administration
Las Vegas, Nevada
Case No. 72-5388(CA)

Dear Mr. Peer:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (5) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that there is insufficient evidence to establish a reasonable basis for the Section 19(a)(5) allegation contained in the complaint and, consequently, further proceedings on such allegation are unwarranted. However, with respect to the Section 19(a)(1) allegation, I find that a reasonable basis for that portion of the complaint exists inasmuch as, in my view, substantial questions of fact have been raised with regard to, among other things, the general public's accessibility to the information contained in the facility's reading file binder retained in the Control Tower.

Accordingly, your request for review is granted, in part, and the instant case is hereby remanded to the Regional Administrator, who is directed to reinstate that portion of the complaint alleging a violation of 19(a)(1) and, absent settlement, to issue a notice of hearing on such allegation.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

December 23, 1975

Mr. Darrell D. Reazin
Vice President, Western Region
PATCO
109/8105 Edgewater Drive
Oakland, CA 94621

Re: FAA, Las Vegas Control Tower - PATCO
Case No. 72-5388

Dear Mr. Reazin:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, it is noted that Mr. Brubaker, in his capacity as a union representative, wrote a letter to activity management objecting to certain critical statements by management concerning the job performance of unit employees. In defense of his constituents he placed the blame for a complaint by a pilot against local FAA operations at the feet of management. In my mind, this action is protected by the Order.

However, in sending a copy of his letter to the pilot and to the pilot association in which the pilot was a member, Brubaker, in his capacity as a union representative, converted what arguably was a protected act into an unprotected act by publicly bringing into disrepute the functions of his employer.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon the undersigned Regional Administrator and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary f[illegible] Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business January 7, 1976.

Sincerely,

[signature]

Gordon [illegible]

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-20-76

Mr. John W. Mulholland
Director, Contract Negotiation Department
American Federation of Government Employees
1325 Massachusetts Avenue, N.W.
Washington, D. C. 20005

720

Re: Defense Mapping Agency,
Topographic Center,
Providence Office,
West Warwick, Rhode Island
Case No. 31-7566(AP)

Dear Mr. Mulholland:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Supplemental Report and Findings on Grievability in the above-named case wherein he found that the grievance involved in this case was not on a matter subject to the negotiated grievance procedure.

In agreement with the Regional Administrator, and based on his reasoning, I find that, as a question of interpretation and application of the parties' negotiated agreement exists with respect to whether the position of Security Specialist (General), GS-11, is subject to Article XXI of the agreement involved herein, such matter is subject to the negotiated grievance procedure. Further, noting the express language contained in the last sentence of Article XXIV, Section 12, of the parties' negotiated agreement and the absence of any evidence to the contrary, I agree with the Regional Administrator's conclusion that the parties did not intend to exclude from the negotiated grievance procedure grievances over the application of higher authority regulations, because such regulations were not cited or referenced in the agreement.

However, under all of the circumstances, I disagree with the Regional Administrator's ultimate conclusion that the grievance herein is on a matter not covered by the negotiated grievance procedure. Thus, it was noted that the subject grievance alleged, among other things, that the promotion involved herein was not made "on the basis of qualification, merit and fitness." In my view, this allegation raises questions as to the application of certain sections of Article XXI (the

Promotions article) of the negotiated agreement. Thus, Article XXI, Section 1 provides, in part, that in making promotions "the Activity will utilize, to the extent possible, the skills and talents of its employees." In addition, the article sets forth a number of procedural steps to be followed by the Activity in making a promotion selection, including the minimum area of consideration,..the posting of promotion opportunity notices on bulletin boards, the timeliness of the filling of vacancies, an explanation of panel rankings, the use of supervisory appraisals, the effectuation of temporary promotions, employee requests for reconsideration, the preparation of the Selection Certificate, the review of promotion documents, and the utilization of Standards of Work Performance. Inasmuch as the grievance herein pertains to the merits of the promotion involved as well as promotion procedures and the application of certain higher authority regulations to such procedures, which matters are covered by the negotiated grievance procedure, I find that the instant matter is grievable and should be processed under the agreement's negotiated grievance procedure. Accordingly, your request for review, seeking reversal of the Regional Administrator's Supplemental Report and Findings on Grievability, is granted.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Regional Administrator, Labor-Management Services Administration, U.S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Regional Administrator's address is: Room 3515, 1515 Broadway, New York, New York 10036, telephone (212) 399-5231.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

Defense Mapping Agency
Topographic Center
Providence Office,
Rhode Island

Activity - Applicant

and

Local 1884
American Federation of
Government Employees, AFL-CIO

Labor Organization

CASE NO. 31-7566 (AP)

SUPPLEMENTAL REPORTS AND FINDINGS ON GRIEVABILITY

On April 26, 1974, I issued a Report and Findings on Grievability in the instant case finding that the grievance was on a matter subject to the negotiated grievance procedure. On June 18, 1974, the decision was sustained by the Assistant Secretary. The matter was appealed to the Federal Labor Relations Council and on April 10, 1975, the Council set aside the findings and remanded the case to the Assistant Secretary for appropriate action consistent with its decision that the Assistant Secretary had not made the necessary determinations and had not used the proper standard for determining whether the grievance was subject to the negotiated grievance procedure.

On July 25, 1975, the Assistant Secretary remanded the case to the Assistant Regional Director for further processing concluding that the parties should be afforded an opportunity to present additional evidence and arguments concerning the following issues:

1. Whether the position of Security Specialist (General) is within the bargaining unit and, thus, is subject to Article XXI, entitled "Promotions" of the agreement.

2. Whether the subject grievance, in fact, involves the "application" of higher authority regulations.

3. Whether it was the intent of the parties to make grievable under Article XXIV, Section 12, the application of higher authority regulations without the regulations being specifically incorporated or referenced in the agreement.

The undersigned has completed the additional investigation and finds as follows:

A. With respect to item number one (1) above, the position of Security Specialist is within the bargaining unit; however, a dispute exists as to whether or not Article XXI entitled "Promotions" applies to all unit employees or solely to those within the "Cartographic field."

If Article XXI is interpreted to mean solely cartographic positions, the position

of Security Specialist would not be covered by the promotion procedures set forth in Article XXI. Accordingly, I reaffirm my position as set forth in the Report on Findings; namely, a question exists as to the interpretation of Article XXI of the Collective Bargaining Agreement and such question must be resolved prior to determining what promotion procedure should be followed in filling the position of Security Specialist. In my view, the question of the interpretation and application of Article XXI is a matter subject to the negotiated grievance procedure.

B. With respect to item number three (3) above, the language of Article XXIV, Section 12, is clear and unambiguous as it relates to the filing of grievances over the application of higher authority regulations. Such grievances are subject to the negotiated grievance procedure and there is no evidence that the parties intended otherwise. I am not persuaded by the Activity's argument that Section 12 clearly excluded grievances over the application of higher authority regulations unless they are specifically incorporated or referenced in the agreement, nor am I persuaded that such an agreement would be contrary to Section 13 of the Order.

An examination of the agreement discloses that the language of Section 12(a) of the Order has been incorporated into the parties agreement. The language used to set forth the provisions of Section 12 of Article 24 with the exception of the last sentence was a change recommended by a higher headquarters. Hence, the parties clearly established that questions concerning the interpretation of higher authority regulations whether cited or otherwise incorporated or referenced in the agreement were precluded from being processed pursuant to the negotiated grievance procedure. On the other hand, no evidence has been adduced which would form a basis to conclude that the parties clearly intended to preclude grievances over the application of higher authority regulations unless such regulations are cited or otherwise incorporated or referenced in the agreement.

The Activity contends that Section 13 of the Order, prior to the amendments made by E.O. 11838, specifically made non-grievable grievances over higher authority regulations which were not cited nor incorporated in the agreement. A review of the Report and Recommendations on the Amendment of E.O. 11491 dated June 1971 disclosed that the Council sought to amend the Order to provide a negotiated grievance concerning matters involving only the interpretation or application of the negotiated agreement and not involving matters outside the agreement.

In my view the Council did not limit the negotiated grievance procedures to matters specifically cited or incorporated in the agreement but merely delineated the scope of the negotiated grievance procedure.

Accordingly, I conclude that the failure to specifically cite, incorporate or reference higher authority regulations in the agreement is not a sufficient basis, standing alone, which would make such an agreement contrary to the Order as it existed prior to the amendments of E.O. 11838.

The Federal Labor Relations Council in its explanation of the recommendation which led to the amendment of Section 13 of the Order stated in part: 1/

The major problems which have arisen concerning the implementation of Section 13 have centered on the meaning of the phrase "any other matters." Some agencies and labor organizations have sought a precise delineation of such "matters." This has

1/ Labor Management Relations in the Federal Service (1975) pp 45-51.

not been possible. Once matters covered by statutory appeal procedures have been excluded from the coverage of all negotiated grievance procedures, those remaining "other matters" which are also excluded vary from unit to unit depending upon the scope of the grievance procedure negotiated in each unit and by the nature and scope of the remaining provisions in the negotiated agreement itself. Therefore, a general definition of "any other matters" which would be uniformly applicable throughout the program is not possible.

Based upon the foregoing, I reject the Activity's conclusion that the parties intended solely to limit grievances over the application of higher authority regulations to those specifically cited, incorporated or referenced in the agreement. Moreover, I do not agree that such a finding subjects a wide range of higher authority regulations to the negotiated grievance procedure. Matters which are beyond the scope of bargaining would not be subject to the negotiated grievance procedure, nor would matters which would violate Section 12(b) of the Order or matters otherwise excluded per Section 11(b) of the Order. In addition, a final decision on such grievances would have to be consistent with applicable law, appropriate regulation of the Order. 2/

Accordingly, I conclude that the parties did not intend to exclude from the negotiated grievance procedure, grievances over the application of those higher authority regulations not cited or referenced in the agreement insofar as the grievance deals with matters within the Activity's discretion and which affect working conditions of employees within the unit provided applicable clauses of the agreement are subject to such higher authority regulations.

With respect to item two (2) above, an analysis of the grievance as stated in the exclusive representative's letter of February 1, 1974 discloses that the grievance concerns the proper application of higher authority regulations. Specifically, the grievance alleges the following:

A. The Providence Office, DMATC, in promoting Mr. Hagop Dasdaguilian to the position of Security Specialist Qualification Standards, CSC Handbook X118 and FPM 335, Promotion and Internal Placement and agency regulations by failing to make the promotion on the basis of qualification, merit and fitness.

B. The highly qualified rating factors cited in vacancy announcement No. PVO 73-5 were tailored to Mr. Dasdaguilian.

Grievant contends that the grievance "radiates" primarily from preselection and includes violations of procedures established in Article XXI of the agreement. An examination of Article XXI entitled Promotions discloses that it sets forth certain procedures to be followed in filling vacant positions; however, there is no section within Article XXI which the Activity has violated or may reasonably be considered to have violated which pertains to the issues set forth in the grievance. As stated with respect to item three (3), the application of higher authority regulations applicable to specific provisions of the agreement would be grievable insofar as the grievance concerns matters within the Activity's discretion and which affect working conditions.

In the instant case, the aggrieved employees withdrew their applications prior to the selection and apparently prior to the evaluation process maintaining that the evaluation methods utilized were biased, and arbitrary determinations were made in filling the position.

2/ Bureau of Prisons and Federal Prison Industries Inc., Washington, D.C. and Council of Prison Locals, AFGE, FLRC No. 74A-24, June 10, 1975, Volume 74.

In view of the evidence before me, I must conclude that the grievance does involve an application of higher authority regulations, however, the grievance does not allege nor have I been able to find any provision of the agreement which has been violated by the alleged failure to properly apply the disputed higher authority regulations.

I, therefore, conclude that the grievance is not on a matter subject to the negotiated grievance procedure.

Having concluded that the grievance is not subject to the negotiated grievance procedure, I hereby amend my Report and Findings on Grievability consistent with my findings above.

Pursuant to Section 205.5(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ARR: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business November 13, 1975.

DATED: October 29, 1975

BENJAMIN B. NAUMOFF
Assistant Regional Director
Labor-Management Services

Attach: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-20-76

721

Mr. William Persina
Staff Attorney
National Treasury Employees Union
Suite 1101 - 1730 K Street, N. W.
Washington, D. C. 20006

Re: Internal Revenue Service
National Office
Case No. 22-6469(CA)

Dear Mr. Persina:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Sections 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings with regard to the 19(a)(2) allegation are unwarranted in that a reasonable basis for such allegation has not been established. However, contrary to the Regional Administrator, I find that a reasonable basis for the Section 19(a)(1) and (6) allegations has been established. Thus, in my view, the complaint herein raises material issues of fact and policy which can best be resolved on the basis of evidence adduced at a hearing.

Accordingly, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint is granted, in part, and the case is hereby remanded to the Regional Administrator, who is directed to reinstate the complaint insofar as it alleges violations of Sections 19(a)(1) and (6) of the Order and, absent settlement, to issue a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

January 21, 1976

Mr. William E. Persina
Assistant Counsel
National Treasury Employees Union
Suite 1101 - 1730 K Street, N.W.
Washington,D.C. 20006
(Cert. Mail No. 137954)

Re: Internal Revenue Service
National Office
Case No. 22-6469(CA)

Dear Mr. Persina:

In the case captioned above, your organization alleged that the respondent Activity had engaged in conduct violative of Sections 19(a)(1), (2) and (6) of Executive Order 11491, as amended. These allegations were investigated and after carefully reviewing all material relevant to the case, I have decided that its further processing is not warranted as a reasonable basis for the complaint has not been established.

The substance of your complaint is that the National Office of the Internal Revenue Service issued Manual Supplement 13G-75, dated March 7, 1975 without first affording NTEU the opportunity to bargain over its substance, impact, and implementation. You contend that the Activity's conduct in issuing MS 13G-75 was violative of the Order in light of the previous spoken and written commitments from the IRS National Office to discuss with NTEU the subject matter of the issuance before making any final decisions on it.

The investigation revealed that the subject matter of Manual Supplement 13G-75, the issuance which instigated the complaint, is not the same as those issues which the Internal Revenue Service agreed to discuss with NTEU. Manual Supplement 13G-75 delineated the procedures to be used in evaluating the qualifications of Estate Tax Attorneys who have competitive status and who wish to be reassigned to Appellate Conferee positions in the Appellate Division. The subjects which the Activity agreed to discuss with NTEU were the following:

(1) The creation of GS-905 Attorney positions in the Appellate Division;

(2) Legislative and non-legislative proposals to obtain competitive status for Estate Tax Attorneys; and

(3) The creation of GS-905 Attorney positions in the Employee Plans/Exempt Organizations program.

Accordingly, the Activity's failure to confer with NTEU prior to issuing Manual Supplement 13G-75 cannot be regarded as a breach of a commitment.

The Activity's contention that the issuance did not in any way change any of its personnel policies or practices is not persuasive, and I find that the issuance did, in fact, affect a new policy in some IRS Districts. However, even though the issuance affected a change in a personnel policy, its issuance without prior notice to NTEU was not violative of Section 19(a)(6) of the Order as the IRS National Office, which issued the policy, is not a party to a national exclusive relationship with NTEU; NTEU does not hold national consultation rights with IRS; and, the policy did not contravene any provisions of the parties' negotiated agreement. 1/

With regard to the 19(a)(2) allegation, your complaint did not cite any conduct on the Activity's part which indicated that the Activity sought to "encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment."

Based on the foregoing, I am dismissing this complaint in its entirety, since a reasonable basis for the complaint has not been established.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business February 5, 1976.

Sincerely,

Kenneth L Evans

Kenneth L. Evans
Regional Administrator for
Labor-Management Services

1/NASA, Washington,D.C. and Lyndon B. Johnson Space Center, Houston, Texas, A/SLMR No. 566, and Department of the Treasury, Internal Revenue Service, A/SLMR No. 550

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-20-76 722

Mr. Richard G. Remmes
General Counsel
National Association of Government
Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: Defense Civil Preparedness Agency
Region One
Maynard, Massachusetts
Case No. 31-9693(CA)

Dear Mr. Remmes:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case.

In agreement with the Regional Administrator, I find that there is insufficient evidence to establish a reasonable basis for the Section 19(a)(2) allegation contained in the complaint and that, therefore, dismissal of that allegation is warranted. However, with respect to the 19(a)(3) and (6) allegations, I find that a reasonable basis for the complaint has been established.

Accordingly, the request for review is granted, in part, and the matter is remanded to the Regional Administrator, who is directed to reinstate the complaint insofar as it alleges violations of Sections 19(a)(3) and (6) of the Order, and, absent settlement, to issue a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

February 5, 1976 In reply refer to Case No. 31-9693(CA)

Richard G. Remmes, General Counsel
National Association of Government Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: Defense Civil Preparedness
Agency, Region One
Maynard, Massachusetts

Dear Mr. Remmes:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The complaint alleges that the Respondent intentionally stalled contract negotiations to permit the American Federation of Government Employees, AFL-CIO to file an RO petition seeking to represent the unit of employees represented by the National Association of Government Employees, Local Union R1-84. Further, the complaint states that this intentional stalling by Respondent discouraged membership in the National Association of Government Employees since it appeared that the National Association of Government Employees was ineffective in getting Respondent to negotiate. By these actions, you conclude that Respondent has violated Sections 19(a)(2)(3) and (6) of the Order, as amended.

Evidence initially submitted in support of your complaint establishes the following chronology of events:

1. In December 1974, contract proposals were submitted to Respondent.
2. On January 29, 1975, Respondent, by memo, directed certain persons to review the proposals and provide typed comments by February 14, 1975.

3. On February 19, 1975, Respondent, by memo, designated its negotiating team.
4. On March 3, 1975, NAGE submitted another copy of its contract proposals and requested that Respondent advise Mr. Leonard Foley as to when Respondent's representatives would be available to discuss the time and procedure for negotiations.
5. By memo dated June 30, 1975, Respondent advised its negotiating team of the schedule for negotiations, sending a copy of the memo to Mr. Foley.
6. By letter dated August 15, 1975, NAGE accused Respondent of deliberately stalling the negotiations.

Upon a request by the Boston Area Office for additional evidence to support the complaint, you submitted a letter wherein you advised that Mr. Leonard Foley, President of the National Association of Government Employees' local union, had contacted Respondent's Administrative Officer at least once a week during the period December 1974 to March 1975, concerning the progress of negotiations and contacted the Administrative Officer approximately five times during the period March 1975 to June 30, 1975, concerning negotiations. In addition, Mr. Martin Williamson, NAGE National Representative, had at least two telephone conversations with Respondent's Regional Director during the period December 1974 to March 1975, concerning the progress or lack of progress of negotiations and a similar conversation on May 26, 1975 which was confirmed by a letter dated July 1, 1975 addressed to Respondent's Regional Director.

An examination of the July 1, 1975 letter discloses an allegation that Respondent had promised on May 26, 1975 to begin negotiations within two weeks; however, as of July 1, 1975, Respondent had not even submitted counterproposals or proposals. The letter concludes with the following statements:

"We would appreciate ... any action that will start negotiations."

"Thank you for your cooperation."

By letter dated July 11, 1975, Respondent's Regional Director replied to the July 1, 1975 letter advising that the proposed dates to start negotiations had been forwarded to the local President

who had forwarded them to Mr. Williamson for approval. The letter advised that any additional information should be requested directly from the Administrative Officer or the President of the NAGE Local Union.

Evidence adduced discloses NAGE Local R1-84 and Respondent had entered into a collective bargaining agreement effective September 12, 1969 which by its terms terminated on September 11, 1971. By letter dated June 21, 1972, Respondent's new Personnel Manager introduced himself to the then President of Local R1-84, noted that the aforementioned agreement had terminated and solicited from the local any plans it had to continue an agreement. No evidence has been adduced that representatives of the local or NAGE, prior to December 1974, made any affirmative response to the letter of June 21, 1972.

Although there is some dispute as to the exact nature of the requests to bargain made by or on behalf of NAGE Local R1-84 subsequent to submission of its initial proposals, I am not persuaded that Respondent's actions constituted an intentional delay in order to permit a rival labor organization time to obtain a sufficient showing of interest to file a representation petition nor do I view Respondent's actions as exhibiting bad faith or constituting dilatory tactics.

In this respect, I note that Respondent, by memorandum dated June 30, 1975, established a schedule for negotiations whereby it would send its contract proposals to the exclusive representative on August 1, 1975 and on August 15, 1975, Respondent would meet with union officials to discuss dates of pre-negotiation and negotiation meetings. A copy of this memorandum was served upon the President of NAGE Local R1-84. Although Martin Williamson, NAGE National Representative, by letter dated July 1, 1975 protested the delay in negotiations to Respondent's Regional Director, there were no requests for negotiations or protests concerning the negotiation schedule established by Respondent subsequent to the July 1, 1975 letter and prior to the filing of the pre-complaint charge.[1/] Moreover, the failure on the part of representatives of NAGE Local R1-84 or NAGE to take any affirmative action subsequent to the July 11, 1975 letter from Respondent's Regional Director convinces me that there were no objections to the schedule for negotiations.

1/ It is apparent from the contents of the July 1, 1975 letter that Williamson was unaware of the negotiation schedule established by Respondent on June 30, 1975.

The representation petition involved was filed on August 13, 1975 by the American Federation of Government Employees, Case No. 31-9582(RO).

Based on the foregoing and especially considering the fact that no meetings for negotiation had been held prior to the filing of the petition, I conclude that Respondent's action did not constitute a deliberate attempt to stall negotiations in order to allow another union to petition for an election. Even if the schedule for negotiations had been adhered to, the petition would have been filed prior to any binding agreement. No negotiation meeting was scheduled prior to the filing of the petition. No evidence has been adduced that Complainant's representatives sought to change the schedule proposed by Respondent or in any other way objected to it. There is no evidence that Respondent was aware of the AFGE petition prior to its filing.

Moreover, considering the past history of events and the fact that the actions of the representatives of NAGE Local R1-84 and NAGE did not exhibit any sense of urgency, I conclude that there is no evidence which would form a reasonable basis to conclude that Respondent's representatives intentionally stalled negotiations in order to demonstrate that NAGE was ineffective in getting Respondent to negotiate.

As the Complainant in this matter, the NAGE bears the burden of proof at all stages of the proceeding regarding matters alleged in its complaint. For the reasons set forth above, I find that the NAGE has not borne its burden of proving the existence of a reasonable basis for its complaint that the Respondent Activity violated Section 19(a)(2)(3) and (6) of the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received

by the Assistant Secretary for Labor-Management Relations, ATTN: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, not later than the close of business February 20, 1976.

Sincerely yours,

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

CC: John W. McDonald, Administrator
Fiscal & Material Services Division
Defense Civil Preparedness Agency, Region One
Federal Regional Center
Maynard, Massachusetts 01754

Walter J. Flaherty, Jr., National Representative
American Federation of Govt. Employees, AFL-CIO
512 Gallivan Boulevard
Dorchester, Massachusetts 02124

Allan R. Zenowitz, Regional Director
Defense Civil Preparedness Agency, Region One
Federal Regional Center
Maynard, Massachusetts 01754

Leonard Foley, President
NAGE, Local R1-84
131 Cedar Street
Braintree, Mass. 02184

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

5-20-76

Mr. Carmen R. Delle Donne
President, Local 2578
American Federation of Government
Employees
National Archives Building
Room Z-E
Washington, D. C. 20408

723

Re: National Archives and Records Service
Case No. 22-6447(CA)

Dear Mr. Delle Donne:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Sections 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, and noting that allegations raised for the first time in your request for review (i.e., that management demonstrated bad faith by: submitting incorrect staffing patterns to G.S.A., refusing to allow the Director of the Records Declassification Division to participate in negotiations, and harassing unit personnel), will not be considered by the Assistant Secretary at the request for review stage of a proceeding (see Report on Ruling of the Assistant Secretary Report No. 46, copy attached), your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachments

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

(CERTIFIED MAIL NO. 701941)

March 9, 1976

Mr. Carmen R. Delle Donne
President, Local 2578
American Federation of Government
Employees
National Archives Building
Room ZE
Washington, D.C. 20408

Re: National Archives and Records Service
Case No. 22-06447(CA)

Dear Mr. Delle Donne:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted.

You allege that the National Archives and Records Service violated Sections 19(a)(1) and (6) of the Executive Order by failing to meet and confer in good faith with you prior to submitting a proposed reorganization to higher Agency officials for their review and approval. You further allege that the Respondent refused to meet and confer with you on the adverse impact and implementation of the reorganization by letter dated August 18, 1975. Further you allege the Respondent employed deceit and less than good faith bargaining when it furnished the union a copy of a staffing pattern as of June 13, 1975 which differed from the copy actually posted in the branch. In addition, you allege that at a September 10, 1975 negotiation meeting the management team advised you that they did not have responsibility for the decision to staff the branch with Archivists and they did not have authority to change or influence the decision. Finally, you allege that the Respondent implemented the reorganization on October 1, 1975 before negotiations with the union had been concluded.

The investigation revealed that on August 7, 1975 you were informed by the Respondent of its plans to reorganize the Records Declassification Division. On August 22, 1975, you filed an unfair labor practice charge regarding the Activity's alleged failure to negotiate with you regarding the formulation of the reorganization and the impact upon the unit employees of changes in staffing patterns and the procedures to be used in the implementation

of the reorganization. On September 9, 1975, the Respondent replied to the charge and offered to meet with you in order to resolve any misunderstanding that you might have concerning its alleged failure to meet and confer with you. Meetings were held on September 10 and 11, 1975. On September 18, 1975, the Respondent furnished the union with copies of staffing patterns that had been posted in the Division over a period of several months. On September 24, 1975, the Respondent notified you of its willingness to continue negotiations and unless you responded by the close of business on September 25, 1975 it would assume the negotiations over the reorganization had been concluded to the mutual satisfaction of both parties. You responded on the same date and indicated you needed more time "probably within ten days". On September 25, 1975 the Respondent notified you that ten days was unacceptable because it would unduly inhibit managements performance of its mission. Respondent proposed to meet with you at 10:00 A.M. on September 29, 1975, indicating this to be a reasonable compromise. The evidence submitted indicates that you neither responded nor proposed an alternate date nor appeared for the meeting. Thus, it appears that you waived your right to further negotiations. As to the allegation that the Respondent failed to negotiate with you during the formulation of the reorganization plan, precedent decision of the Assistant Secretary has held that the decision to reorganize is excluded from the obligation to bargain by virtue of Section 11(b) and 12(b) of the Executive Order. However, an exclusive representative may request and should be afforded the opportunity to negotiate over impact and implementation procedures.1/

With respect to your allegation that management refused to meet and confer on the adverse impact and implementation by letter dated August 19, 1975, evidence submitted indicates that this was in response to your letter to Respondent dated August 18, 1975 in which your allegations raised issues reserved to management by Sections 11(b) and 12(b) of the Order.

Concerning your allegation that management employed deceit in furnishing you a copy of a staffing plan as of June 13, 1975 which differed from the one actually posted in the Division; the staffing pattern was discussed in the September 10 and 11 meetings with management and further, you presented no evidence to show that you ever asked the Activity for an explanation in this connection.

As to the remaining allegation, i.e., that at the September 10, 1975 negotiation meeting the management team advised the union that it did not have responsibility for the decision to staff the branch with Archivists and it did

1/ Federal Railroad Administration, A/SLMR 418

not have authority to change or influence the decision, as indicated above the Activity had no obligation to negotiate these matters which are reserved to management by virtue of Sections 11(b) and 12(b) of the Order.

Accordingly, for the reasons stated above, and on the grounds that a reasonable basis for the complaint has not been established, I am dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany this request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business March 24, 1976.

Sincerely,

Kenneth L. Evans

Kenneth L. Evans
Regional Administrator
For Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

6-17-76

Mr. Leo A. Lyons, Sr.
President, Local 54
American Federation of Government
Employees, AFL-CIO
P. O. Box 1486
Fort Benning, Georgia 31905

724

Re: U. S. Army Infantry Center
Fort Benning, Georgia
Case No. 40-6773(CA)
and
U. S. Army Civilian Appellate
Review Office
Atlanta, Georgia
Case No. 40-6774(CA)

Dear Mr. Lyons:

I have considered carefully your requests for review seeking reversal of the Regional Administrator's dismissal of the complaints in the above-captioned cases alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaints has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your requests for review, seeking reversal of the Regional Administrator's dismissal of the subject complaints, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

March 3, 1976

Mr. Leo A. Lyons, Sr.
President, Local 54
American Federation of Government
Employees, AFL-CIO
Post Office Box 1486
Fort Benning, Georgia 31905

RE: U. S. Army Infantry Center
Fort Benning, Georgia
Case No: 40-6773(CA)

Dear Mr. Lyons:

The above-captioned case alleging a violation of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Investigation discloses that on April 22, 1975, Angelo Conte, a supervisor of Respondent, filed a grievance concerning a letter of reprimand he had received. Conte designated you as his representative. Conte's job was later abolished and effective July 7, 1975, he became a member of the bargaining unit. Respondent denied Conte's request to be represented by you on the ground that the action being grieved was based on matters related to Conte's responsibilities as a supervisor and that representation by you would constitute a conflict of interest inasmuch as Conte supervised employees who are in the unit represented by you. Conte then filed another grievance with Respondent on July 3, 1975, based on Respondent's denial of his request to be represented by you. Both grievances are being processed under the agency grievance procedure.

On August 26, 1975, an investigatory proceeding was scheduled to be conducted by an Investigator of the U. S. Army Civilian Appellate Review Office (USACARO) in connection with appeal of the grievance filed by Conte on April 22, 1975. You, Conte, John C. Royer, Conte's designated alternate representative, and Regis E. Blair, Business Agent of Complainant, appeared at the Civilian Personnel Office where interviews were to take place. The USACARO representative informed you that you could not represent Conte in his grievance appeal stating that it had been determined a conflict of interest existed. You and Blair then left the Civilian Personnel Office.

The complaint alleges violation of Sections 19(a)(1) and (6) by Respondent's denying you and Blair the right to represent Conte or to be present during the investigatory hearing.

The only section of the Executive Order which could arguably create the right alleged to be infringed, that is the right to represent Conte in the agency's grievance proceeding, is Section 7(d)(1). That Section states in part:

> Recognition of a labor organization does not preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation, or from choosing his own representative in a grievance or appellate action . . .

This section merely precludes certain conduct by an agency. It does not establish a right of an employee in a grievance matter to have a representative of his choice. It simply disavows taking away certain rights that may be conferred elsewhere by law or regulation. 1/ Failure to grant privileges under Section 7(d)(1) would not give rise to an unfair labor practice complaint. Therefore, even if Respondent refused to permit Conte to be represented by you as his personal representative in the agency's grievance proceeding or by you as a union representative, such refusal would not constitute a violation of Section 19 of the Order.

Moreover, I find that the complaint is barred by Section 19(d) of the Order. Conte filed a grievance on July 3, 1975, on the issue of his right to be represented by you, the representative of his choice. Conte's grievance is being processed under the agency's grievance and appeals system. Issues which have been raised in a grievance procedure may not be raised under both that procedure and the unfair labor practice procedure in Section 19. Inasmuch as the issue which is the basis for the complaint was raised under a grievance procedure, the matter may not be raised as an unfair labor practice.

With respect to any right the exclusive representative has to be present at formal discussions within the meaning of Section 10(e), the complaint alleges that you were denied the right to be present during the investigatory hearing on August 26, 1975. There is no allegation in the pre-complaint charge that the exclusive representative should have been given the opportunity to be represented at the August 26 proceedings. In the absence of an allegation in a pre-complaint charge that the exclusive representative was denied the opportunity to be represented at a formal discussion, I deem that that issue is not before me. Therefore, I shall make no finding as to whether the August 26, 1975, proceeding was a formal discussion within the meaning of Section 10(e) or whether there is a reasonable basis for complaint that Respondent refused to permit the exclusive representative to be represented at the proceedings.

1/ See Internal Revenue Service, Chicago District, A/SLMR No. 279.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business March 18, 1976.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

6-17-76

Mr. George Tilton
Associate General Counsel
National Federation of Federal
Employees
1016 16th Street, N. W.
Washington, D. C. 20036

725

Re: Illinois National Guard
Springfield, Illinois
Case No. 50-13081(CA)

Dear Mr. Tilton:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the instant complaint alleging a violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Acting Regional Administrator, that a reasonable basis for the complaint has not been established and that, therefore, further proceedings in this matter are unwarranted. Thus, I find no evidence to support your contention that the quartering of elephants in the Chicago Avenue Armory without prior consultation resulted in a change of working conditions among unit employees. In this regard, I note particularly that the evidence establishes that there exists a past practice of quartering elephants in the Armory, a fact you do not dispute, and that you have presented no evidence, other than your allegation, to establish that a statement was made by the Adjutant General in June 1974, that the Armory would no longer be used for that purpose.

Accordingly, and noting particularly that Section 203.6(e) of the Assistant Secretary's Regulations provides that the Complainant bears the burden of proof at all stages of an unfair labor practice proceeding, your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF DEFENSE,
ILLINOIS NATIONAL GUARD,
SPRINGFIELD, ILLINOIS,

Respondent

and

Case No. 50-13081(CA)

LOCAL 1655, NATIONAL FEDERATION
OF FEDERAL EMPLOYEES,

Complainant

The Complaint in the above-captioned case was filed on September 26 1975, in the Office of the Chicago Area Administrator. It alleges a violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in this case.

It is alleged that the Respondent violated Section 19(a)(1) and (6) of the Order by its failing to properly consult and confer with the Complainant relative to the stabling of four elephants in the Chicago Avenue Armory. It is argued that the stabling of these elephants, in a building occupied by employees of the Respondent who are represented by the Complainant, resulted in a change of working conditions and had an adverse impact on the quality of the environment. It is further alleged that the decision by the Respondent to stable the elephants was made notwithstanding a previous statement to the Complainant that the Armory would not be used for this purpose.

Investigation reveals that the initial charge in this matter was made on March 19, 1975, in a letter to the Adjutant General of the State of Illinois. The crux of the charge is the failure of Activity management to have consulted and conferred with the Complainant prior to the stabling of the elephants, which occurred in the first three weeks of March 1975.

It is the Respondent's position that the practice of contracting for the civilian use of Armories and, more specifically, contracting with the organization which quarters their elephants in the Chicago Avenue Armory during the period the circus is being held for the benefit of crippled children, has continued for a good many years, and is not a new condition that would require prior negotiation. The Respondent denies having made any statement regarding the stabling of elephants at the Armory.

The charge in this case was filed in March 1975. The Respondent replied initially that it did not feel the issue of stabling elephants in the Armory was a proper or appropriate subject of negotiation, as the Governor of the State of Illinois is responsible for the utilization of armories within the State, and therefore the Respondent is absolved from responsibility with regard to the civilian use of the armories' space. While I cannot agree that management can escape its responsibilities whenever conditions in a work area impact upon unit employees, I need not reach that issue here. Regardless of its feelings with regard to the obligation to negotiate in this case, the Respondent did agree to meet, and in fact met, with the Complainant on August 20, 1975, to discuss the stabling of elephants in the Armory herein. It also, in response to the Complaint herein filed, proclaims its continued willingness to meet on the issue further. Whether there was an obligation to negotiate prior to the actual stabling of the elephants in March 1975 I need not reach. The Complainant, perhaps rightfully thinking that such stabling would not again take place in 1975, did complain of such stabling as soon as it began. At that point the elephants were there; discussion or negotiation with regard to what should or shall be done in the future was the subject of discussion in August, and the chance to discuss the problem further is presumably still available to the Complainant. I cannot decide, nor am I called upon to do so, whether the August discussions were meaningful. I am asked to decide whether the lack of prior notification and/or negotiations in early 1975 violates the Order. Even if I were to find that such violates the Order, the remedy would be to order management not to make such a decision for the future without notice and negotiation, which I find has already taken place. I therefore see no reason for making such a finding, and shall dismiss the allegations of the Complaint. In these circumstances, I also find that it is unnecessary to determine whether management in fact stated it would not stable elephants in the Armory again, a determination that in any event could only be made after benefit of record testimony.

Having considered carefully all the facts and circumstances in this case, including the charge, the Complaint and all that is set forth hereinabove, the Complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the

Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business February 27, 1976.

Dated at Chicago, Illinois, this 12th day of February, 1976.

Stephen F. Jeroutek
Acting Regional Administrator
U. S. Department of Labor, LMSA
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

6-17-76

Mr. Gregory V. Powell 726
Assistant Counsel
National Treasury Employees Union
Suite 1101
1730 K Street, N. W.
Washington, D. C. 20006

Re: Internal Revenue Service
National Office, Brookhaven
Service Center, Chamblee
Service Center, Chicago
District Office
Case No. 22-6504(CA)

Dear Mr. Powell:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint filed in the above-named case alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, and contrary to the Acting Regional Administrator, I find that the instant complaint raises substantial issues of fact and policy which warrant a hearing.

Accordingly, and as, in my view, the complaint herein was properly filed in accordance with the Assistant Secretary's Regulations, your request for review is granted and the instant case is remanded to the Regional Administrator who is directed to reinstate the complaint and, absent settlement, to issue a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA.
TELEPHONE 215-59[illegible]

February 20, 1976

Mr. Robert M. Tobias
General Counsel
National Treasury Employees Union
Suite 1101 - 1730 K Street, N.W.
Washington, D.C. 20006
(Cert. Mail No. 782002)

Re: Internal Revenue Service,
National Office, Brookhaven
Service Center, Chamblee
Service Center, Chicago
District Office
Case No. 22-6504(CA)

Dear Mr. Tobias:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted.

You alleged that during March 1975, the Respondents refused to permit eight employees to be represented by the National Treasury Employees Union (NTEU) while they were being questioned by Internal Revenue Service (IRS) inspectors. The inspectors from the IRS Inspection Service interviewed eight IRS employees: Russell Butterelt, Thomas E. Verrault, Donald L. Disier, Wendy Brewer, Gussi Martin, Ferrolene Jones, Jacquelyn Thurmond and Noble Freeman, Jr.

It is clear that the inspectors who questioned the employees acted at the direction of the Regional Inspectors rather than at the direction of the District Director or Service Center Directors, who are Respondents in this complaint. Accordingly, I am dismissing the 19(a)(1) and (6) allegation against the Directors of the Brookhaven Service Center, Chamblee Service Center and Chicago District Office.

With respect to the allegation that the Commissioner of the IRS violated Section 19(a)(6) of the Order, I find that although the inspectors were acting in accordance with IRS National policy, the National Office is not a party to the bargaining relationship with NTEU. Therefore there is no basis for finding a violation of Section 19(a)(6) of the Order. For that reason, I am dismissing that aspect of the complaint. 1/

1/ NASA, Washington,D.C. and Lyndon B. Johnson Space Center, Houston, Texas, A/SLMR No. 566.

With respect to the remainder of this complaint, it is clear that you take issue with the decision of the Assistant Secretary in Texas Air National Guard, (TANG), A/SLMR No. 336, that an employee is not entitled to a representative at an investigatory interview until a grievance has been filed. You argue essentially that the Supreme Court issued two decisions subsequent to Texas Air National Guard, namely NLRB v. J. Weingarten, Inc., 95 S. Ct. 959 (1975) and ILGWU v. Quality Mfg. Co. 95 S.Ct. 972 (1975), which appeared to indicate that employees have a right to representation at an investigatory interview. Your argument is that the Assistant Secretary should modify the TANG decision in light of the Supreme Court decisions. 2/

In the TANG decision, the Assistant Secretary found that certain "counselling sessions" were not formal discussions within the meaning of Section 19(e) where (1) the discussions did not involve the processing of a grievance; (2) did not involve general working conditions; (3) concerned the alleged shortcomings of a particular employee, and (4) had no wider ramifications than being limited discussions at a particular time with an individual employee concerning particular incidents pertaining to him. The TANG decision is on point with regard to the interviews of employees Buttereit, Verrault and Disier. The other five employees, however, were questioned not about their own conduct but about the conduct of fellow employees. The decision of the Assistant Secretary in Federal Aviation Administration,Las Vegas Air Traffic Control Tower, Las Vegas, Nevada, A/SLMR No. 429 3/ is more directly on point, 4/ and I find it controlling. The Assistant Secretary and the Federal Labor Relations Council has already spoken on the issues arising from this complaint. I am bound by those decisions. Whether Weingarten or Quality should modify the position of the Assistant Secretary or Council is not for me to decide and I shall not do so.

Accordingly, for the reasons stated above and on the grounds that a reasonable basis for the complaint has not been established, I am dismissing said complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention:

2/ The Federal Labor Relations Council is presently reviewing as a major policy issue whether an employee has a right to representation at an investigatory interview.

3/ Like the facility Review Board in the FAA case, the inspectors were not authorized to and did not, in fact, recommend disciplinary action although the facts developed might be used as a basis for disciplinary action.

4/ See also, Internal Revenue Service, Washington,D.C., FLRC 74A-23.

Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business March 8, 1976.

Sincerely,

Frank P. Willette

Frank P. Willette
Acting Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

6-17-76

Mr. James B. Rhoads
Archivist of the United States
National Archives and Records Service
8th & Pennsylvania Avenue, N. W.
Washington, D. C. 20408

727

Re: National Archives and Records Service
General Services Administration
Washington, D. C.
Case No. 22-6290(AP)

Dear Mr. Rhoads:

This is in connection with your request for clarification of the Assistant Secretary's ruling on the request for review filed in the above-named case.

In the subject ruling, it was found that the instant application was procedurally defective because it was filed untimely. In addition, it was noted that the invoking of arbitration in the matter appeared to be inconsistent with the terms of the parties' negotiated agreement. In reaching the disposition herein, the merits of the application were not considered. Consequently, no finding was made as to the arbitrability of the cited sections of the negotiated agreement.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NATIONAL ARCHIVES AND RECORDS SERVICE
GENERAL SERVICES ADMINISTRATION

Activity/Applicant

and Case No. 22-6290(AP)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
AFL-CIO, LOCAL 2578

Respondent/Labor Organization

REPORT AND FINDINGS
ON
GRIEVABILITY OR ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

On December 26, 1974, the Union filed a grievance alleging, in summary, that management's cancellation of a vacant Supervisory Archivist Branch Chief Position on November 28, 1974, and redefining it as a Supervisory Publications Sales Specialist and transferring it to the excepted service and filling it noncompetitively with someone who had not applied for the original posting violated Article II, Article IV, Section 1(b) and Article XVI, Section 1 of the Agreement because there was no proper cancellation of the initial vacancy; because the Local was not consulted; because the job description changes were not real, because qualified applicants were present; and because such change-overs tend to preselection.

By letter dated April 16, 1975, the Activity took the position that Article II of the Agreement was not grievable, that the matter was not grievable under Article XVI, Section 1, because position description changes are not grievable, however, it agreed that the matter was grievable under Article XVI, Section 2.

An arbitrator was selected to hear the grievance and the hearing was scheduled for July 24, 1975.

Before the arbitration hearing opened, the Activity advised the arbitrator that its position was that the matter was not grievable under the negotiated grievance procedure and that it had filed an Application for Decision on Grievability or Arbitrability with the Assistant Secretary for Labor-Management Relations.

The relevant agreement provisions are as follows:

ARTICLE II: EXECUTIVE ORDER REQUIREMENT

In the administration of all matters covered by this Agreement, Management and the Union are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published GSA procedures and regulations in existence at the time this Agreement is approved; and by subsequently published GSA procedures and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher GSA level.

ARTICLE IV: UNION RIGHTS AND OBLIGATIONS

Section 1, Scope of Representation.

b. Management agrees to consult with the Union on the formulation of general personnel policies and practices and on other matters affecting general working conditions within the discretion of Management, before implementation. Whenever feasible, Management shall give the Union advance notice of one week prior to such meetings, and provide general information as to the subject(s) of the meetings.

ARTICLE XVI: PROMOTIONS

Section 1, Promotion Plan. Management agrees to select employees for promotion in accordance with the GSA Promotion Plan (GSA Handbook, OAD P 3630.1, "Employees Appraisal System and Promotion Plan"), which is freely available to all employees in offices at the branch level and above.

Section 2, Posting of Vacancies.

a. Copies of position vacancy announcements will be posted by Management on bulletin boards in a central location in each NARS-occupied building. Such announcements will be posted at least five full working days prior to their closing date. Copies of such announcements will be available at the Manpower Branch, NARS.

b. Should the Union wish to further publicize vacancy announcements for positions in the Unit, it shall be allowed to make and post a list of such vacancies on bulletin boards in organizational units, subject to procedures approved by the Executive Director, NARS.

ARTICLE XIII: GRIEVANCES

Section 1, Purpose and Coverage. This Article provides a procedure, applicable only to the Unit, for the consideration of grievances over the interpretation or application of this Agreement. This procedure does not cover any other matters, including matters for which statutory appeals procedures exist. It is the exclusive procedure available to Management and the Union and to the employees in the unit for resolving such grievances. Should an employee or group of employees in the unit choose to be represented by or accompanied by a representative, the Union shall have the exclusive right to such representation. However, an employee or group of employees in the Unit may present such grievances to Management and have them adjusted, without the intervention of the Union, as long as the adjustment is not inconsistent with the terms of this Agreement, and the Union has been given an opportunity to be present at the adjustment.

Section 2, Definition. As used in this Article, the term "grievance" is defined as a request, written and submitted in accord with the provisions of this Article, addressed by a member of the Unit, a group of such members, and/or the Union to the level of Management having the authority to grant relief on a matter involving the interpretation or application of this Agreement.

ARTICLE XIV: ARBITRATION

Section 1, Criterion. Grievances not settled by the procedures prescribed in Article XIII may be submitted by the Union for arbitration.

With respect to the issue of whether the matter is grievable under Article II of the Agreement, the Union's position is that alleged violations of the FPM are covered by the Negotiated Grievance Procedure because the language in Article II incorporates the policies set forth in the Federal Personnel Manual into the Agreement by reference. The Activity's position is that the parties never agreed or intended that matters which involve the interpretation of the FPM, published Agency policies or regulations to be subject to the negotiated grievance procedure and that Article II is merely a restatement of Section 12(a) of the Executive Order.

The Union does not even contend that at the time Article II was drafted the parties agreed and intended to make alleged violations of the sources cited in the provision subject to the negotiated Grievance Procedure. It appears that the Union desires to expand the scope of the negotiated grievance procedure to cover these matters and is trying to utilize Article II as a vehicle instead of negotiating the matter.

I find that the matter raised by the grievance is not grievable under Article II of the Agreement. Article II does not deal with or bestow any rights, it simply restates the requirements set forth in Section 12(a) of the Executive Order that are applicable to every agreement between an agency and a labor organization.

With respect to whether the matter is grievable under Article IV, Section 1(b), the Union's position is that in Article IV, Section 1(b) management agrees to consult with the union on the formation of general personnel policies and practices and other matters affecting general working conditions within the discretion of management, before implementation. Management violated this Article because it did not consult with the Union before changing the position from competitive to excepted service.

The Activity's position is that management has the right under Section 11(b) and 12(b) of the Order to cancel one position and to establish another, therefore, the matter is non-grievable. The Activity also argues that the transfer of a position from the competitive to the excepted service does not constitute a change in personnel policies or practices which require consultations.

Article IV, Section 1(b) sets forth management's obligation to consult with the Union; alleged violations of this Article are grievable under the negotiated grievance procedure. I find that the matter involves the application and interpretation of Article IV, Section 1(b) and is grievable and arbitrable.

With respect to whether the matter is grievable under Article XVI, Section 1, both the Activity and the Union agree that alleged violations of Article XVI, Section 1, are grievable. However, the Activity argues that the provisions of the GSA promotion do not apply to the case because the GSA Promotion Plan only covers positions in the competitive service and the appointment in this case was made under the excepted authority. In my view, alleged violations of Article XVI, Section 1, are grievable. I find that the matter, herein, involves the application and interpretation of Article XVI, Section 1, and is grievable and arbitrable.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 12, 1975.

Dated: August 28, 1975

Kenneth L. Evans
Assistant Regional Director for
Labor-Management Services

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

6-22-76 728

Ms. Doris Pyles
3820 Highland, Apt. 4
San Diego, California 92105

Re: Veterans Administration Regional Office
San Diego, California
Case No. 72-5989(CA)

Dear Ms. Pyles:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on May 25, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on June 9, 1976. Your request for review postmarked on June 9, 1976, was received by the Assistant Secretary subsequent to that date.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

May 25, 1976

Mrs. Doris Pyles
3820 Highland, Apt. 4
San Diego, CA 92105

Re: V.A. Regional Office
San Diego, CA
Case No. 72-5989

Dear Mrs. Pyles:

The above captioned case alleging violations of Section 19 of the Executive Order 11491, as amended, have been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as your complaint concerns the implementation of an agency grievance procedure, and there is no evidence of anti-union motivation. The Assistant Secretary in Naval Air Station (North Island), San Diego, A/SLMR No. 452 found that Section 7(d)(1) of the Order does not confer any rights enforceable under Section 19 and that where employees are subject to agency grievance procedure, in absence of anti-union motivation, the agency's improper failure to apply provisions of its procedure cannot be considered violative of the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on June 9, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON
7-6-76

729

Mr. J. H. Roberson, Jr.
202 East California Street
Ontario, California 91761

Re: Department of the Navy
Naval Air Station
Los Alamitos, California
Case Nos. 72-5910, 72-5911
72-5985, 72-5986
72-5987 and 72-5988

Dear Mr. Roberson:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaints in the above-named cases.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant cases on June 2, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on June 17, 1976. Your request for review postmarked on June 16, 1976 was received by the Assistant Secretary subsequent to June 17, 1976.

Accordingly, since your request for review was filed untimely the merits of the subject cases have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaints, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

June 2, 1976

Mr. J. H. Roberson, Jr.
202 East California Street
Ontario, California 91761

Re: Navy, Naval Air Station
Los Alamitos, CA -
J. H. Roberson, Jr.
Case Nos. 72-5910, 5911,
5985, 5986, 5987, and 5988

Dear Mr. Roberson:

The above-captioned cases alleging violations of Section 19 of Executive Order 11491, as amended, have been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as at all times referred to in the complaint, Complainant was a supervisory official of Respondent and thus, under the Order, cannot assert 7(d)(1) rights under 19(a)(1) of the Order. (Internal Revenue Service, A/SLMR Nos. 279 and 280.) Further, the claims that arose from agency grievance procedures cannot be raised in an unfair labor practice complaint absent a showing of discriminatory motivation or anti-union animus. (U. S. Navy, Naval Air Station, North Island, A/SLMR No. 452.) It is further noted that Complainant has submitted no evidence in support of the 19(a)(4) allegation.

I am, therefore, dismissing the complaints in these matters.

I have considered Respondent's Motion to Dismiss. In view of my action in these cases, I find it unnecessary to rule on the Motion.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assist-

ant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on June 17, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-7-76

730

Mr. Raymond B. Swain
Preident
Local 1858, American Federation
of Government Employees, AFL-CIO
Building 3648
Redstone Arsenal, Alabama 35809

Re: Department of the Army
United States Army Missile
Command
Redstone Arsenal, Alabama
Case No. 40-6828(GA)

Dear Mr. Swain:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Grievability in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the instant dispute is not grievable under the provisions of the parties' negotiated grievance procedure as it is on a matter for which a statutory appeal procedure exists.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Grievability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY
UNITED STATES ARMY MISSILE COMMAND
REDSTONE ARSENAL, ALABAMA

Activity

and

LOCAL 1858, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Labor Organization/Applicant

Case No. 40-6828(GA)

REPORT AND FINDINGS
ON
GRIEVABILITY

Upon an Application for Decision on Grievability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, an investigation of the matter has been conducted by the Area Administrator. Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

The Applicant Labor Organization filed a request on January 16, 1976, in the Atlanta Area Office to determine whether a grievance it filed on November 7, 1975, is on a matter subject to the grievance procedure of the existing agreement. The agreement is for a three-year period effective March 6, 1975, covering approximately 5,000 employees of the Activity's facility.

The circumstances giving rise to the grievance are as follows

Richard F. Maroon, an Illustrator, GS-1020-11, in the Directorate for Maintenance, on September 29, 1975, was given a reduction-in-force (RIF) letter for reassignment to Illustrator (Technical Equipment), GS-1020-11, in another division of the Activity, the Missile Intelligence Agency (MIA). On October 10, 1975, he accepted the position and was scheduled to be reassigned effective December 10, 1975. The Illustrator positions in the MIA, including the position to which Maroon was to be reassigned, were subsequently reaudited and reclassified. As a result of the audit the Illustrator positions were placed in a different competitive level and changed to Intelligence Illustrators. On October 30, 1975, the Activity amended Maroon's RIF letter and withdrew the original offer of reassignment. He was also notified that he was being reached for change to lower grade to the position of Illustrator (Technical Equipment), GS-1020-09, effective January 5, 1976.

Maroon's grievance charged that the change in competitive level after issuance of the RIF letter denied him first round bumping rights in violation of Articles XV and XXVII of the contract.

Maroon claims that the action was a deliberate attempt to circumvent the RIF procedure inasmuch as the MIA position was audited in March 1975 and found to be properly coded and classified. Maroon's grievance requested that the amended notice of reduction be withdrawn and that the reclassification action be rescinded until after he exercised first round bumping rights.

On December 19, 1975, the Activity rejected the grievance on the grounds that actions giving rise to Maroon's dissatisfaction were taken under RIF regulations which are appealable to the Federal Employee Appeals Authority, U. S. Civil Service Commission. It stated that Section 2d of Article V excludes appeals which must be resolved through U. S. Civil Service Commission procedures.

Article V, Grievance and Arbitration Procedure section 2d states:

> Grievances and appeals which must be resolved through established U. S. Civil Service Commission and Department of the Army procedures are excluded from the provisions of this Article.

It is the Applicant's position that the existence of a statutory appeal procedure is not in question. It concedes that a statutory appeal procedure exists for contesting the action giving rise to Maroon's grievance. It maintains the Activity violated contract provisions set out in Articles XV and XXVII when it denied Maroon the right to displace a lower retention sub-group employee during a RIF. The Applicant maintains that if an article in the agreement is violated, then the alleged violation is grievable under the agreement regardless of whether the article makes reference to a statutory or regulatory procedure for contesting the action in question. According to the Applicant an article in an agreement which was negotiated in good faith would have no meaning if it were not grievable.

Article XV is entitled Reduction in Force, Demotions and Involuntary Reassignments. Section 1b provides as follows:

> All reductions in force will be carried out in strict compliance with governing laws and regulations. In the event of a reduction in force, existing vacancies will be utilized to the maximum extent to place employees in continuing positions who otherwise would be separated from the service. When an employee is released from his competitive level and is entitled to position and qualifies for more than one position which would constitute reasonable offers, the Employer will select the specified position to be offered the employee which will result in the best placement action. When more than one employee is released from their competitive level(s), and where each employee is fully and equally qualified for a vacant position, the employee with the highest retention standing will be given priority consideration in filling the vacancy. All additional retention points for outstanding performance ratings will be based on the employee performance rating of record on the date on which RIF notices are issued.

Article XXVII entitled Competitive Level provides that:

> a. Competitive levels for positions that are interchangeable will be the same for all organizations of the competitive area. Like positions will not be placed in different competitive levels based solely on organizational structure within the competitive areas. Further, employees will, upon request, be advised of their initial competitive level and subsequent changes, if any, by the Civilian Personnel Division.
>
> b. Fragmented (i.e. separate) competitive levels shall not be used to circumvent reduction in force procedures prescribed in FPM 351. Competitive levels will be established in accordance with FPM 351. Jobs so similar in all important respects that the employees can be readily moved from one job to another without significant training and without unduly interrupting the work program will be placed in the same competitive level.

It is the Activity's position that the action complained of falls within the scope of actions specified in the Federal Personnel Manual Chapter 351 which are appealable to the Federal Employee Appeals Authority. FPM 351-37, Subchapter 9-1.a.(1) provides in part that:

> A competing employee may appeal to the Commission when he has a specific notice of reduction in force and believes his agency incorrectly applied the instructions in this chapter.

The Activity states that Section 13 of the Order provides that a negotiated grievance procedure may not cover matters for which statutory appeal procedures exist. The Activity also states that exclusion of complaints concerning matters in FPM 351 is excluded by Article IV, Section 1e of the contract. That section states:

> Employer and Union agree that grievances and arbitration will extend only to the application and interpretation of this AGREEMENT and will not be invoked by either party regarding the governing provisions of existing or future laws and regulations including policies set forth in the Federal Personnel Manual and Department of the Army regulations.

The Activity states that Article XV, Section 1b of the negotiated agreement reflects management's agreement to conduct all RIF's in strict compliance with governing laws and regulations but does not disclaim the resolution or dissatisfactions concerning such laws and regulations through the Civil Service Commission appeal procedure.

Clearly the issue raised by Maroon is a matter which can be raised in a statutory appeal procedure. The parties agree that the appeal procedure is available. The Applicant argues that two Articles of the contract, Article XV dealing with Reduction In Force and Article XXVII dealing with Competitive Level provide that the procedures set out in FPM 351 will be adhered to; the contract also allows alleged violations of FPM 351 to be brought under the contract.

Applicant states that these articles were negotiated in good faith and employees should have the right to grieve violations of these articles as well as any other negotiated provisions even if the article makes reference to a statutory or regulatory procedure for contesting the action in question.

The Order in Section 13 provides that an agency and a labor organization shall negotiate a procedure for the consideration of employee grievances. The negotiated grievance procedure shall be limited to coverage of grievances which involve the interpretation or application of the negotiated agreement. Section 13(a) states in pertinent part:

> The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this Order. (emphasis supplied)

It is clear that the grievance procedure in the agreement may not extend to matters for which statutory appeal procedures exist. A statutory appeal procedure exists to consider RIF matters, including those matters relating to competitive levels. Therefore, a statutory appeal procedure exists to consider the matter raised in the Maroon grievance. Accordingly, I find that the grievance filed on November 7, 1975, is not on a matter subject to the grievance procedure in an existing agreement.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary with a copy upon this office and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business March 9, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Dated: February 23, 1976

LEM R. BRIDGES, Assistant Regional
Director for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-7-76

731

Mr. William E. Rhodes
124 Mt. Circle Drive
Sumner, Washington 98390

Re: McChord Air Force Base
McChord Air Force Base, Washington
Case No. 71-3542(CA)

Dear Mr. Rhodes:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, which alleges a violation of Section 19(a)(1) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the complaint has not been established, and that, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

April 2, 1976

Mr. William E. Rhodes
124 Mt. Circle Drive
Sumner, WA 98390

Re: McChord AFB -
William E. Rhodes
Case No. 71-3542

Dear Mr. Rhodes:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, it would appear that the thrust of your allegation in the complaint is that Respondent on some undetermined date prior to November 23, 1973, received certain written comments which were assertedly critical of your union activities and that Respondent's subsequent dealings with you as an employee were influenced by this information.

It is noted, initially, that there is no affirmative evidence that such information was, in fact, received by Respondent and that there is only your unsupported contention in that regard which was denied by Respondent at the November 23, 1973, hearing as well as in an August 20, 1975, statement by supervisor Carden.

Moreover, there is insufficient evidence that your asserted union activities were the cause for your being criticized for certain construction delays.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210 not later than the close of business on April 19, 1976.

Sincerely,

Gordon M. Byrnolde

Gordon M. Byrnolde
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

732

Mr. John N. Sturdivant
President, Local 1754
American Federation of Government
Employees, AFL-CIO
Route 7, Box 253
Winchester, Virginia 22601

JUL 8 1976

Re: U. S. Army
Corp of Engineers and Engineer
Mathematical Computation Agency
Berryville, Virginia
Case Nos. 22-6278(AP) and
22-6279(AP)

Dear Mr. Sturdivant:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability in the above-named cases.

In agreement with the Acting Regional Administrator, I find that, under the particular circumstances herein, the instant grievances involving the procedures utilized in the filling of a personnel vacancy, are not grievable or arbitrable. Thus, the evidence establishes that the vacancy involved was filled prior to the effective date of the Activity's reorganization. Consequently, at the time of selection, the position in question was not in either of the bargaining units covered by the negotiated agreements in question.

Accordingly, the request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS
WESTERN VIRGINIA AREA OFFICE (WVAO)

Activity/Respondent

and

Case No. 22-6278(AP)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
LOCAL 1754, AFL-CIO

Applicant

REPORT AND FINDINGS
ON
GRIEVABILITY OR ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

By letter dated June 27, 1975, the Union filed a grievance with the Respondent charging that the Respondent had violated the Negotiated Agreement, the provisions of the Vacancy Announcement, and Department of Army and Civil Service Commission Regulations when an employee was selected for a Merit Promotion Vacancy advertised within the Department of Army under Vacancy Announcement No. 75-25 dated June 4, 1975.

By letter dated July 9, 1975, the Respondent rejected the grievance on the grounds that the position, in question, was not in the bargaining unit and, therefore, not covered by the terms and provisions of the Negotiated Agreement. 1/

1/ This is a companion case to the one filed by the Applicant herein in Case No. 22-6279(AP). The Union is the collective bargaining agent for the U. S. Army Engineer Mathematical Computation Agency and, in a separate unit, U. S. Army Corps of Engineers, Western Virginia Area Office. The Union filed identical grievances asserting that the employees in each unit were not given the opportunity, pursuant to contract, to bid for the Merit Promotion Vacancy described herein.

The pertinent agreement provisions are:

Merit Promotion Policy

Article 18-1. It is understood that the term "Merit Promotion" covers the requirements of higher authority for assuring that promotions to positions are on a merit basis under systematic and equitable procedures established for this purpose. Procedures outlined in appropriate regulations and in this Agreement will follow in processing merit promotion actions. Practices will be avoided that may lead employees to believe that a person was preselected for a position under competitive procedures or that a promotion was based on favoritism.

Article 18-2. The Employer agrees to attempt to fill vacancies from within the minimum area of consideration; as established, in conformance with appropriate regulations. This will not in any way restrict the selecting supervisor from selecting anyone on the Best Qualified List.

Grievance Procedures

Article 23-1. The purpose of this Article is to provide for a mutually acceptable method for the prompt and equitable settlement of grievances over the interpretation or application of this Agreement. This negotiated procedure shall be the exclusive procedure available to the Union and the employees in the Bargaining Unit for resolving such grievances. However, an employee or groups of employees may present grievances informally, directly to the appropriate supervisor without Union participation with the understanding that the adjustment will be consistent with the Agreement and that the Union has an opportunity to be present at the adjustment.

Article 23-2(a). The Employer and the Union agree that every effort will be made by the Employer, the Union representative, and the grievant, to settle grievances informally and at the lowest possible level.

(b). Reasonable time during working hours will be allowed for an employee and his Union representative to prepare and present a grievance under this Article.

Article 23-3. Inasmuch as dissatisfactions and disagreements arise occasionally among people in any work situation, the filing of a grievance shall not be construed as reflecting unfavorably on an employee's good standing, his performance, or his loyalty or desirability to the organization. In the case of a grievance involving a group of employees, one employee's grievance shall be selected by the Union for processing. All decisions for that grievance will be binding on the other grievances.

Article 23-4. An employee may present a grievance concerning an interpretation of a provision of this Agreement at any time. He must present a grievance concerning an application of this Agreement for a one-time act or decision within fifteen (15) working days of the act or decision. Grievances concerning the application of this Agreement resulting from a continuing current condition may be presented at any time.

The Northern Virginia Civilian Personnel Office (NVCPO) serviced several activities, one of which is the Applicant. 2/ In June of 1975, the Activity, herein, and the U. S. Army Engineer Mathematical Computation Agency were involved in reorganization which transferred the two activities from the U. S. Army Corps of Engineers to the General Services Administration At about the same time, the NVCPO was asked to service the Federal Preparedne Agency (FPA), also a part of the General Services Administration. The NVCPO posted the position of Planning Assistant, GS-301-09, for an FPA unit. 3/

The Union argues that vacancy announcement for the position of Planning Assistant, GS-301-09, specified that the area of consideration was all Department of Army elements serviced by the Northern Virginia Civilian Personnel Office and only if the aforementioned area of consideration failed to produce at least three highly qualified candidates could concurrent consideration be given to outside applicants. The minimum area of consideration produced three highly qualified candidates but an employee from outside the Agency was afforded concurrent consideration and selected for the promotion in violation of the Negotiated Agreement, the provisions of the Vacancy Announcement and Department of Army and Civil Service Commission Regulations.

The Activity asserts that the position of Planning Assistant, GS-301-09, is not included within AFGE, Local 1754's exclusively recognized bargaining unit but is included in the Federal Preparedness Agency, Western Virginia Operations Office, which is a part of the General Services Administration's Central Office Residual Unit represented by the National Federation of Federal Employees.

AFGE, Local 1754 does not dispute the Respondent's assertion that the position is not in the bargaining unit.

2/ The U. S. Army Engineer Mathematical Computation Agency was another activity serviced.

3/ The FPA has a contract with a local of the National Federation of Federal Employees (NFFE).

In my view, a Negotiated Agreement only covers the employees and is applicable to positions in the bargaining unit. Since the position involved in the grievance is not located within the unit of recognition granted to AFGE, Local 1754, the grievance over the manner in which the position was filled is not covered by the Negotiated Grievance Procedure.

I find, therefore, that the matter raised by the Applicant is not grievable or arbitrable under the Negotiated Agreement of the parties.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 15, 1975.

Dated: August 29, 1975

Frank P. Willette

Frank P. Willette
Acting Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-13-76

Mr. E.R. McCrary
President
American Federation of Government
Employees, Local 2947
483 E. Poppyfields Drive
Altadena, California 91001

733

Re: General Services Administration
Region 9
San Francisco, California
Case No. 72-5705(CU)

Dear Mr. McCrary:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Petition for Clarification of Unit in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the International Union of Operating Engineers, Local 501, AFL-CIO, is the exclusive representative of the employees in question.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Petition for Clarification of Unit, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

GENERAL SERVICES ADMINISTRATION REGION 9 -PETITIONER -AND- INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, AFL-CIO -INTERVENOR -AND- AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2947, AFL-CIO -INTERVENOR	CASE NO. 72-5705

REPORT AND FINDINGS

ON

PETITION FOR CLARIFICATION OF UNIT

Upon a petition for clarification of unit having been filed in accordance with Section 202.2(c) of the Regulations of the Assistant Secretary, the undersigned, after th posting of notice of the petition, has completed the investigation and finds as follows:

The Petitioner seeks clarification of the representational status of certain Wage Grade Refrigeration and Air-Conditioning Mechanics employed at 300 North Los Angeles Street, Los Angeles, California who are involved in operating and maintaining steam boilers and refrigeration and air conditioning equipment, maintaining that there is an apparent overlapping of units involving the International Union of Operating Engineers, Local 501, and the American Federation of Government Employees, Local 2947.

The representational history of the employees involved indicates that on November 8, 1967, the International Union of Operating Engineers, Local 501, (hereafter referred to as the IUOE) was afforded exclusive recognition for the following unit:

> All employees involved in operating and maintaining steam boilers and refrigeration and air-conditioning equipment at 300 North Los Angeles Street, Field Office, Los Angeles, California, except for supervisors who evaluate the performance of any employee within the unit.

Although the IUOE engaged in contract negotiations with the Petitioner in 1969, no contract was ever consummated. A dues withholding agreement was finalized on July 7, 1971.

On September 9, 1971, the American Federation of Government Employees, Local 2947 (hereafter referred to as the AFGE) was certified as the exclusive representative for all employees in a unit described as follows:

> All Wage Grade, Wage Leader, and General Schedule employees of the Buildings Management Division, Public Buildings Service, General Services Administration in the Los Angeles Metropolitan area, excluding managers, supervisors, professional employees, guards, and employees engaged in Federal personnel work in other than a purely clerical capacity.

Election records indicate that Refrigeration and Air-Conditioning Mechanics were excluded from voting in the AFGE election on the basis that they were already represented in another unit, the IUOE unit. No other classifications of employees are claimed to be in the IUOE unit. However, due to an inadvertent clerical error the certification issued to AFGE did not specifically exclude these employees.

The Petitioner takes no position with respect to these employees and instead seeks only to clarify their representational status.

The IUOE maintains that it is the exclusive representative for these employees by virtue of its 1967 recognition. It contends that the Petitioner has always officially recognized the IUOE as the representative and that these employees did not participate in the election which resulted in AFGE's certification. The fact that these employees were not specifically excluded on the certification must be due to some administrative error which should be corrected by the issuance of an amendment of the certification granted the AFGE.

The AFGE maintains that since its Certification does not specifically exclude these employees, they are a part of its unit. AFGE further contends that it has been the effective representative for these employees since its recognition by the Petitioner in 1971. As evidence of this, AFGE cited several instances wherein it represented these employees at their request in various disputes with Petitioner as early as 1972.

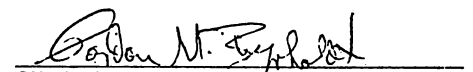
I find that the IUOE has been the official representative for all employees involved in operating and maintaining steam boilers and refrigeration and air-conditioning equipment at 300 North Los Angeles Street, Los Angeles, California, since its recognition by Petitioner on November 8, 1967. The representational history cited by the AFGE I find to be inconclusive in that the alleged instances of representation were informal and oral discussions and were not related to its negotiated grievance procedure. I further find that the omission of the standard phrase "and excluding all other units" from the certification granted the AFGE was due to an inadvertent administrative error and that these employees did not participate in the AFGE's election in 1971. In this regard, our investigation of election records discloses that lists of employees used during the election and initialed by the parties to the election, including appointed AFGE representatives, affirmatively excluded employees in the classification of Refrigeration and Air-Conditioning Mechanics from participating in the election.

Having found that employees in the classification of Refrigeration and Air-Conditioning Mechanic are represented for the purposes of exclusive recognition by the International Union of Operating Engineers, Local 501, the parties are advised hereby that, absent the timely filing of a request for review of this Report and Findings

the undersigned intends to issue a Clarification of Unit ordering that the Certification granted to the American Federation of Government Employees, Local 2947, be amended to specifically exclude all employees involved in operating and maintaining steam boilers and refrigeration and air-conditioning equipment at 300 North Los Angeles Street, Los Angeles, California.

Pursuant to Section 202.4(i) of the Regulations of the Assistant Secretary a party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210. A copy of the request must be served on the undersigned Regional Administrator as well as the other parties. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business February 25, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION



GORDON M. BYRHOLDT
Regional Administrator
San Francisco Region
9061 Federal Office Building
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: February 10, 1976

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-13-76

Mr. Edward L. Mann
2635 Mapleton Avenue, No. 29
Boulder, Colorado 80302

734

Re: Veterans Administration Regional
Office, Reno, Nevada
Case No. 70-5054(CA)

Dear Mr. Mann:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, which alleges violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

January 22, 1976

Mr. Edward L. Mann
2635 Mapleton #29
Boulder, Colorado 80302

Re: Veterans Administration
Regional Office
Case No. 70-5054

Dear Mr. Mann:

The above-captioned case alleging violation of Section 19 of Executive Order 11491, as amended, has been reviewed and considered carefully. It does not appear that further proceedings are warranted inasmuch as the complaint has not been timely filed pursuant to Section 203.2 of the Regulations.

On July 9, 1975, the American Federation of Government Employees (AFGE), Local 2152 filed an unfair labor practice complaint at the San Francisco Area Office alleging that the Respondent, Veterans Administration Regional Office, Reno, Nevada, violated Sections 19(a)(1)(2) and (4) of the Order by terminating you from its employ because of your union activities. This complaint was found to be untimely since it was filed more than 60 days from service of the Respondent's final decision to the pre-complaint charge.

You contend that AFGE was not acting in your behalf when it filed its complaint. However, you were present at the April 7, 1975, meeting between AFGE and Respondent held to discuss AFGE's charges and you were advised that the matter was being pursued through the unfair labor practice procedure. At no time during the course of those proceedings did you attempt to repudiate the actions taken by AFGE. Based upon these facts, I find that AFGE was acting as your agent when it filed its complaint on July 9, 1975. Consequently, you cannot attempt to eradicate AFGE's untimely filing of its complaint by now filing a charge and complaint as an individual. (See Bureau of Reclamation, Boulder Canyon Project Office, Boulder City, Nevada, A/SLMR No. 380).

I am, therefore, dismissing the complaint in this matter

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on February 6, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-13-76

Mr. Joseph B. Rosenberg
President, Local 1923
American Federation
of Government Employees
6401 Security Boulevard
Room 1-J-21 Operations Bldg.
Baltimore, Maryland 21235

735

Re: Social Security Administration
Baltimore, Maryland
Case No. 22-6514(CA)

Dear Mr. Rosenberg:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case.

In agreement with the Regional Administrator, I find that the charge and complaint herein were not timely filed as required by Section 203.2 of the Assistant Secretary's Regulations. Contrary to your argument, I find Section 205.13 of the Assistant Secretary Regulations to be inapposite in this case, inasmusch as that Section deals with the time for filing an unfair labor practice charge and complaint following the issuance of a decision by either the Regional Administrator or Assistant Secretary on an application for decision on grievability or arbitrability, and no such application was filed in this case.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

March 1, 1976

Mr. Joseph E. Rosenberg
President
American Federation of Government
Employees, Local 1923, AFL-CIO
6401 Security Boulevard
Baltimore, Maryland 21235
(Cert. Mail No. 782006)

Re: Social Security Administration
Headquarters, Bureaus and Offices
Case No. 22-6514(CA)

Dear Mr. Rosenberg:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted.

You allege that the Respondent violated Section 19(a)(1)(4) and (6) of the Order by violating the parties' negotiated agreement beginning on or about December 6, 1972, when Robert J. Niemeyer was detailed to the position of Supervisory Social Insurance Claim Examiner (Retirement), GS-993-12. You contend that Niemeyer's detail was in violation of Article 17, Section A, Subsection 6; Article 17, Section C, Subsections 2 and 3; Article 15, Section E; Article 15, Section D, Subsections 18 and 19. You also contend that agents of the Activity issued veiled threats to Niemeyer to discourage him from grieving the detail at the time it was occurring.

The investigation showed that on or about December 6, 1972, Robert Niemeyer was assigned to the position of Acting Unit Chief, Bureau of Disability Insurance. After approximately ninety days elapsed, Niemeyer broached the subject of obtaining a temporary promotion to one of his supervisors. His request was denied and Niemeyer contended that veiled threats were made to him to the effect that if he continued to pursue the matter he would suffer adverse consequences. On or about April 15, 1973, Niemeyer was given a temporary promotion and subsequently a permanent promotion. During the summer of 1974, Niemeyer, upon receipt of an "Employee Personnel Data Summary" noticed that he had not received credit for the assignment

between December 6, 1972 and April 15, 1973. He requested that his personnel records be corrected to reflect the assignment. On or about September 13, 1974, Niemeyer received an SF-52 (Notice of Personnel Action) showing a detail between December 6, 1972 and April 14,1973. Niemeyer then filed a grievance seeking a retroactive temporary promotion with back pay for that period. The grievance was processed through the various steps of the parties' negotiated grievance procedure but on August 26, 1975 dismissed by an Arbitrator as being untimely. On September 24, 1975, you filed an unfair labor practice essentially seeking to have the substance of the grievance heard in that forum.

I am of the opinion that the charge and ensuing complaint are untimely filed. You contend that the time limits which apply to your complaint are those contained in Section 205.13 of the Assistant Secretary's Regulations. However, I find that the particular provision applies only when a decision on grievability or arbitrability is made by the Assistant Secretary or by a Regional Administrator (formerly Assistant Regional Director) for Labor-Management Services. It does not apply when a decision on grievability or arbitrability is made by an arbitrator as happened in the instant case. Thus, the time limits which apply are those contained in Section 203.2 of the Assistant Secretary's Regulations. (The charge must be filed within 6 months of the occurrence of the alleged unfair labor practice. The complaint must be filed within 60 days of a final, written decision on the charge by the Respondent or 9 months of the occurrence, whichever is the shorter period to time.) Your complaint clearly does not meet these time limits. Moreover, I do not find persuasive the Union's claims that its lack of knowledge of the events giving rise to Niemeyer's grievance prevented a more timely processing of the grievance. The timeliness requirements begin upon the occurrence of the event giving rise to the complaint and not upon the Union's discovery of the event. 1/ Even assuming, arguendo, that timeliness requirements were to be counted from the Union's discovery, i.e., September 1974, the complaint is untimely filed.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8 of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of serivce should accompany the request for review.

1/ Federal Aviation Administration, Western Region, San Francisco, California, A/SLMR No. 70-4067; Request for Review No. 348, FLRC No. 74A-26.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business March 15, 1976.

Sincerely,

Kenneth L. Evans
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-14-76

736

Mr. Nathan T. Wolkomir
President
National Federation of Federal Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: Northern Division, Naval Facilities
Engineering Command
Case No. 20-5451(CA)

Dear Mr. Wolkomir:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Sections 19(a)(2), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET,
PHILADELPHIA, PA. 19101
TELEPHONE 215-597-1134

March 10, 1976

Ms. Janet Cooper, Esquire
National Federation of Federal Employees
1016 16th Street, N.W.
Washington,D.C. 20036
(Cert. Mail No. 782010)

Re: Northern Division, Naval Facilities, Engineering Command, U.S. Naval Base
Case No. 20-5451(CA)

Dear Ms. Cooper:

The above-captioned case alleging violations of Section 19(a)(2)(5) and (6) of Executive Order 11491, as amended, has been investigated and carefully considered. It does not appear that further proceedings are warranted.

Basically, your complaint filed January 13, 1976 alleges that Respondent violated the Executive Order when it mandatorily withheld nonresident wages taxes from the pay check of Bayard T. Campbell, Secretary of Local 1430. Mr. Campbell contends that he is not covered by Public Law 93-340 and your complaint suggests that we should carefully study that law.

In accordance with the role of the Assistant Secretary for Labor-Management Relations as described in Section 6(a) of the Order, I have made a determination regarding only those issues which can properly be considered within the scope of Executive Order 11491, as amended.

With respect to your allegation of violations of Section 19(a)(2), you have presented no evidence which would show that in making the mandatory tax deduction, Respondent treated Mr. Campbell in a disparate manner, or that such invidious treatment was because of his union activities and consequently, tended to discourage membership in the union. Since you have not shown a nexus between the payroll deduction and any allegedly discriminatory action, I am dismissing your complaint with respect to the 19(a)(2) allegation.

Basically, Section 19(a)(5) relates to the granting of appropriate recognition. Our investigation in this case discloses that Respondent does, in fact, recognize NFFE, Local 1430 as the Certified Exclusive Representative of Mr. Campbell and that a Collective Bargaining Agreement has been successfully negotiated between the parties. Investigation does not show, nor do you allege, that the Respondent has withdrawn recognition.

To the contrary, as illustrated by material submitted by yourself regarding an attempt to informally resolve this complaint, the record shows that Respondent continues to recognize Local 1430, NFFE. For these reasons, I am dismissing your allegation of violations of Section 19(a)(5).

As regards the 19(a)(6) allegation, although your complaint does not specify how Respondent allegedly violated this Section, two issues are suggested by your complaint.

In the first instance, the Executive Order does not require that agency officials negotiate, through the collective bargaining process, the issue of whether or not it will comply with a particular law. Section 12(a) of the Order provides, in relevant part, that officials and employees are (to be) governed by existing or future laws and the regulations of appropriate authorities. In the second instance, since mandatory withholding could be considered to constitute a change in working conditions, Respondent might reasonably have been expected to consult with you with regard to the impact that its decision to comply with the law would have on unit employees. The record does not show, nor do you allege, that Respondent did not advise you of its decision to implement payroll deduction or that once you became aware of the decision, that you requested consultation and that such a request for consultation was denied. Therefore, because compliance with the law is not a negotiable issue, and you present no evidence to show that Respondent failed to consult regarding the impact that compliance would have on the working conditions of unit employees, I am dismissing your allegations of violations of Section 19(a)(6).

Accordingly, for the reasons stated above and on the grounds that you have failed to establish a reasonable basis for the complaint which would warrant a hearing on either the 19(a)(2)(5) or (6) allegations, I am dismissing your complaint in its entirety.

Pursuant to Section 203.7(c) of the Rules and Regulations of the Assistant Secretary for Labor-Management Relations, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. 20210, not later than close of business March 25, 1976.

Sincerely,

Kenneth L. Evans
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-14-76

Mr. Robert J. Novak
President, American Federation of
Government Employees 737
Local 221, AFL-CIO
Newark Air Force Station
Newark, Ohio 43655

Re: Newark Air Force Station
Aerospace Guidance and
Metrology Center
Newark, Ohio
Case No. 53-8324(CA)

Dear Mr. Novak:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint, which alleges violations of Section 19(a)(1), (3), (4), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE AIR FORCE,
NEWARK AIR FORCE STATION,
AEROSPACE GUIDANCE AND METROLOGY CENTER,
NEWARK, OHIO,

Respondent

and

Case No. 53-8324(CA)

LOCAL 2221, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO,

Complainant

The Complaint in the above-captioned case was filed on July 7, 1975, in the office of the Cleveland Area Director. It alleges a violation of Sections 19(a)(1), (3), (4), (5) and (6) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It does not appear that further proceedings are warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall, therefore, dismiss the Complaint in its entirety.

The Complainant alleges that the Respondent (hereinafter referred to as the "Activity") violated Sections 19(a)(1), (3), (4), (5) and (6) of the Order by threatening in a letter to the Union dated April 3, 1975 to terminate the existing collective bargaining agreement. There is no dispute between the parties as to the essential facts of the case.

The contract between the Newark Air Force Station, Aerospace Guidance and Metrology Center and American Federation of Government Employees, AFL-CIO, Local 2221, dated April 26, 1972 expired on June 12, 1974. The contract was extended by mutual agreement of the parties until December 1974. Negotiations took place on a new agreement which was sent forward to higher authority for approval on January 8, 1975. The parties orally agreed to keep the old contract in effect beyond December 1974 pending approval of the new contract. In February 1975, Headquarters, Air Force Logistics Command disapproved Sections of the contract. The parties renegotiated these sections until the contract was finally signed on May 12, 1975. On March 14, 1975 the Activity proposed to terminate any further extensions of the old contract on May 16, 1975. The Union responded to this proposal by letter dated March 25, 1975. By letter dated April 3, 1975, the Activity advised the Union that they intended to terminate the contract on May 16, 1975. A new contract was signed before the old contract expired and the Activity agreed to keep the old contract in effect during the approval cycle of the new contract. The new contract was approved by Headquarters Air Force Logistics Command in June 1975. Both the charge and the Complaint in this proceeding meet the timeliness requirements of the Assistant Secretary's Regulations. I shall treat each allegation individually.

Complainant contends that the Activity violated Section 19(a)(1) of the Order by threatening AFGE Local 2221 with a terminal date of the existing agreement as a form of reprisal for Union negotiators and Union membership not agreeing or ratifying the provisions of the contract disapproved by higher authority. The Complainant has provided no evidence that the Activity's actions interfere with, restrain, or coerce employees in the exercise of rights assured by the Order. I find that the Activity was acting within its rights when it notified the Union that the contract would terminate. This will be further explained in my discussion of the Section 19(a)(6) allegation.

Complainant alleges that the Activity assisted another organization, the Supervisors Association, by continuing a dues withholding agreement with that organization while threatening to terminate the AFGE dues withholding. Again, I find that the Activity was acting within its rights when it notified the Union that the contract would terminate. Furthermore in this case, the Activity's actions with respect to the Supervisors Association do not appear to be related to the threat to terminate AFGE's contract and dues withholding agreement. I, therefore, find that Complainant has submitted insufficient evidence of a violation of Section 19(a)(3) of the Order.

Complainant contends that the Activity threatened Mr. Robert Novak, President, AFGE Local 2221 with a terminal date of an existing agreement because he invoked impasse proceedings during a bargaining session on March 13, 1975. Section 19(a)(4) of the Order relates to the prohibition upon agency management from discipline or discrimination against employees because they filed complaints or gave testimony under the Order. The invoking of impasse proceedings is not equivalent to "giving testimony under the Order." I, therefore, find that even if true, the alleged action by the Activity would not constitute a violation of Section 19(a)(4) of the Order.

Complainant alleged that the Activity threatened the security and exclusive recognition of the Union by threatening to terminate the agreement, which it argues was in violation of Section 19(a)(5). Complainant has offered no evidence that the Activity has refused at any time to recognize AFGE Local 2221 as the exclusive representative of the employees. On the contrary, the evidence indicates that the Activity has continued to recognize the Union as the exclusive representative of the employees. I find no violation with regard to this allegation.

Finally Complainant alleges that the Activity refused to meet and confer with AFGE Local 2221 when requested to do so by letter dated March 25, 1975. The contract between the parties terminated June 1974. It was extended to December 1974 and thereafter orally extended for an indefinite period. In effect, the collective bargaining agreement itself had expired but the parties had agreed to continue the terms and conditions of employment contained in the contract. As the contract by its own terms had expired, the Activity had a right to terminate the agreement without violating the agreement or the Order. Even assuming arguendo

that the Activity should have negotiated a terminal date, the evidence indicates that the Activity did propose a terminal date (March 14, 1975 letter). The Union responded (March 25, 1975) saying it could not agree to any terminal date, and the Activity gave notice that it would consider the contract terminated. The Activity, therefore, did not refuse to consult, confer or negotiate with the exclusive representative as required by the Order. I, therefore, cannot agree with the Complainant's assertion that the Activity violated Section 19(a)(6) of the Order by its actions in notifying the Union that the contract would be considered terminated.

Having considered carefully all the facts and circumstances in this case, including the charge, the complaint, the positions of the parties, and all that which is set forth above, the Complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a Request for Review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the Request for Review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than close of business January 8, 1976.

Dated at Chicago, Illinois, this 24th day of December, 1975.

Paul A. Barry

Paul A. Barry, Acting Regional Administrator
United States Department of Labor, LMSA
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-14-76

Mr. Robert J. Gorman
Chief Union Negotiator
Council of NFFE Local - GSA Region 5
8 East Delaware Place #3R
Chicago, Illinois 60611

738

Re: General Services Administration
Region 5
Public Building Service
Chicago, Illinois
Case No. 50-13031(RO)

Dear Mr. Gorman:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Objections in the instant case.

In agreement with the Acting Regional Adminstrator, I find that the objections herein do not warrant setting the election aside. Thus, I conclude, in agreement with the Acting Regional Administrator and based on his reasoning, that the objections concerning certain Activity actions allegedly taken against: (1) a National Federation of Federal Employees (NFFE) organizer with regard to his appeal of a disciplinary action and request to take leave, and (2) a NFFE steward with regard to a forced medical examination, have no merit.

Further, in agreement with the Acting Regional Administrator, I find that the objection concerning a unit employee who was allegedly refused supervisory training by the Activity was not filed timely as required by Section 202.20(b) of the Assistant Secretary's Regulations and, therefore, cannot be considered.

Regarding the objections concerning certain voided mail ballots, in my opinion, these objections raise questions concerning validity of the mail ballots at issue and, as such, amount to post-election challenged ballots. In this regard, I find that there is no right to challenge a ballot once the tally has been completed. I note further that the NFFE representative who filed the objection in this matter had previously signed the "Tally of Ballots," certifying that the "counting and tabulating [of the ballots in the instant mail ballot runoff election] were fairly and accurately done . . ."

Finally, I conclude that, as the matters which concerned an American Federation of Government Employees' "strike committee," and several completed ballots allegedly returned by the Postal Service to unit members marked "no such address," were both raised for the first time in the request for review, they cannot be considered. (In this latter regard, see Report on a Ruling No. 46, copy enclosed.)

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Objections, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

GENERAL SERVICES ADMINISTRATION,
REGION 5, PUBLIC BUILDINGS SERVICE,
CHICAGO, ILLINOIS, 1/

Agency and Activity

and

Case No. 50-13031(RO)

GSA REGION 5 COUNCIL OF NFFE LOCALS,
NATIONAL FEDERATION OF FEDERAL EMPLOYEES, 2/

Petitioner

and

AMERICAN FEDERATION OF FEDERAL EMPLOYEES,
AFL-CIO, 3/

Intervenor

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on September 16, 1975, an election by secret ballot was conducted under the supervision of the Area Administrator, Chicago, Illinois, on October 20, 1975. 4/

The results of the election as set forth in the "Tally of Ballots" are as follows:

1. Approximate number of eligible voters ---------- 228
2. Void Ballots---------- 8 5/
3. Votes cast for NFFE---------- 54

1/ Hereinafter referred to as GSA.

2/ Hereinafter referred to as NFFE.

3/ Hereinafter referred to as AFGE.

4/ This was a mail ballot runoff of an election originally conducted on August 22, 1975. The ballots in the runoff were tallied on October 20, 1975, and service of the "Tally of Ballots" form was made on this date by a representative (election supervisor) of the Area Administrator.

5/ The number of void ballots is hereby amended in the "Tally of Ballots" to read 11 (eleven).

4.	Votes cast for AFGE----------	57
5.	Votes cast for----------	0
6.	Votes cast against exclusive recognition----------	0
7.	Valid votes counted----------	111
8.	Challenged ballots----------	0
9.	Valid votes counted plus challenged ballots-------	111

Challenged ballots are not sufficient in number to affect the results of the election, however, void ballots are sufficient in number to have affected the election results. A majority of valid votes counted plus challenged ballots were indicated on the "Tally of Ballots" to have been cast for AFGE. Timely objections to the procedural conduct of the election and to conduct which may have improperly affected the results of the election were filed by NFFE and received in the Chicago Area Office on October 22, 1975 and October 24, 1975. 6/ These objections which I find to be timely, are attached hereto as Appendix A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Chicago Area Administrator has investigated the objections and has transferred the case to the undersigned for consideration. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to the objections.

Objections Concerning the Procedural Conduct of Election

NFFE objects to the procedural conduct of the election in that it disagrees with the election supervisor's opinion that certain mail ballots should be declared void and, therefore not opened and counted in the official tally of ballots.

NFFE considers the voided ballots as falling into three categories:

6/ These letters of objection were followed by three (3) additional letters (with enclosures) filed by NFFE. A letter received in the Chicago Area Office on November 3, 1975, and requesting an extension of time, offered evidence filed in support of the objections, as did letters received in the Chicago Area Office on November 6 and 24, 1975. These materials are considered timely filed pursuant to Section 202.20(b) of the Regulations of the Assistant Secretary (see footnote 12).

(1) One (1) individual returned his ballot in an envelope other than the "franked" (official) pre-addressed envelope which had been provided to all eligible voters in the official mailing of ballots. This "unofficial" envelope did not contain on its outside either the required signature statement or accompanying signature of the voter. It is suggested by NFFE that because this employee's franked envelope had either been mutilated or destroyed another envelope was substituted, and, therefore, the ballot of this voter was improperly voided.

(2) Seven (7) employees failed to place their signatures on the back of the official return envelope below the signature statement. 7/ NFFE contends that "in a previous election such a ballot was challenged and then later counted" and that the same practice should be followed in the instant election. Further, NFFE disagrees with the reasons (stated in voters' instructions) for requiring such signatures.

(3) Three (3) employees cast their ballots on a ballot of a different color. 8/ NFFE reasons that this was "not surprising" because the ballot materials used in the runoff election were mailed in the same type of envelope as in the first election and thus confusion could easily have occurred in the mind of some voters. NFFE believes these ballots associated with the initial election should be counted as valid in the runoff election.

7/ Regarding this category of voided ballots, it must be pointed out that one (1) official return ballot envelope did not contain a signature statement. I will make specific reference to this matter in my conclusion regarding the procedural objections.

8/ In the instant runoff election, the color of the ballots was pink whereas in the previous election, held on August 22, 1975, the ballots were green. Further, the ballot choices in the initial election were: AFGE, "Neither," NFFE, whereas the choices in the runoff election were limited to AFGE and NFFE. Three (3) voters used ballots in the runoff which were distributed to eligible employees for use in the initial election.

Relative to (1), the ballot voided because of the voter's failure to return the ballot provided in the appropriate official return envelope, I find that that ballot was properly voided. The franked, pre-addressed envelope with signature statement is utilized to safeguard the integrity of the balloting in a mail ballot election. Representatives of the Assistant Secretary have the responsibility to insure that only those ballots which are cast in conformity with promulgated instructions 9/ and reasonable rules and practices designed to safeguard the balloting can be counted as valid ballots cast. I see no reason to deviate from the "laboratory conditions" established for balloting. All eligible employees in the instant election were twice informed of a duplicate ballot mailing procedure (first, in the Notice of Election accompanying the mail balloting material; second, in the same Notice of Election posted at various employee work stations) whereby eligible employees could-on a timely basis- request a second mailing of balloting materials. This procedure is expressly designed so that eligibles could correct any problems associated with the mailing of ballots (or, in this instance, the loss or destruction of the official return envelope).

More importantly, all eligible employees were provided as part of their mail balloting materials a notice entitled "Instructions To Eligible Employees Voting By United States Mail." Part of the information contained in this notice is as follows:

> This is a secret ballot election. YOUR BALLOT WILL BE VOID AND WILL NOT BE COUNTED UNLESS you: Return the ballot in the same envelope which you received for that purpose.

Relative to (2), the ballots voided because of the voters' failure to complete the signature statement, I find the NFFE contention to be without merit. The notice mentioned above is explicit on this matter:

> YOU BALLOT WILL BE VOID AND WILL NOT BE COUNTED UNLESS you:
>
> Sign your name in your own handwriting on the outside of that envelope after the word "signature," so that your name can be checked against the eligibility list. 10/

9/ Reference is made to page 9 of the "Procedural Guide for Conduct of Election Under Supervision of the Assistant Secretary Pursuant to Executive Order 11491" wherein the return envelope procedure is clearly described.

10/ It was noted above (footnote 7) that one of the official return envelopes did not contain the signature statement; however, as this applied to a single voided ballot and thus could not affect the election results, I find this defect not in itself sufficient so as to require a second election.

Relative to (3) the use of ballots in the runoff intended for use in the original election of August 22, 1975, it should be clear that this initial ballot was in no way appropriate to the runoff election in question, i.e., the ballot choices were different and, therefore, any selection indicated by a voter using the original ballot is irrelevant to the options in the runoff election. To allow such type a ballot is effectively to destroy the safeguards established to insure that each eligible voter be allowed to cast a single ballot for the valid ballot options. I find these ballots were properly voided.

Additionally, with regard to (1) and (2), it was agreed upon prior to the counting of the ballots in the instant election that any outer envelope which did not contain the signature of the voter was to be declared void. The chief union negotiator representing NFFE (the same individual who subsequently filed the objections to the instant election) was a party to this agreement. It is also noted with regard to all three issues that a "Tally of Ballots" certifying that " . . . the counting and tabulating /of ballots/ were fairly and accurately done . . . . " was signed by this same NFFE representative immediately subsequent to the ballot count.

Based upon the foregoing, I conclude that there was no improper procedural conduct of the election. Accordingly the objections in this regard shall be overruled.

Objections Concerning Conduct Which May Have Improperly Affected the Results of the Election

NFFE's objections in this regard are centered around a series of actions allegedly taken against a NFFE organizer and steward by GSA in order to discourage guards and Federal protective officers from voting for NFFE and around the allegedly discriminatory treatment by GSA against the NFFE organizer relative to leave policy. Each of these allegations will separately be considered.

NFFE alleges that its organizer, a unit employee, in an attempt to appeal disciplinary actions taken against him by GSA, was informed by GSA officials that he could not take such action himself or through a personel representative, but that only Local 1346, AFGE could appeal disciplinary actions taken with regard to employees in the GSA Milwaukee PBS Field Office. Investigation affirms that Local 1346, AFGE is the exclusive representative for employees in this unit.

NFFE supplies no arguement as to how such action, whether proper or not, 11/ could have discouraged other eligible employees in the instant election from

11/ I find that the propriety of such action need not be decided by me within the context of this decision.

voting for NFFE, nor does it supply any other evidence to support its allegation. NFFE has failed to meet its burden of proof in this matter. Accordingly, I conclude that no improper conduct occurred in this regard affecting the results of the election, and I shall overrule this objection.

Concerning the GSA actions allegedly taken against the NFFE steward, it is alleged that the steward was forced to take a fitness-for-duty medical examination during the election campaign. Although the objection and supporting evidence submitted by NFFE is not clear as to whether it is the August 22, 1975, initial election campaign or the October 20, 1975, runoff election campaign that is referred to, I see no need to decide which, as again NFFE supplies no argument or evidence as to how such action could have had a bearing on the election results. 12/ Accordingly, I conclude that no improper conduct occurred in this regard affecting the results of the election and I shall overrule this objection.

Lastly, NFFE points to the fact that GSA granted the president of an AFGE Local three weeks leave, during part of which he did organizing work for AFGE in Chicago, and that a request for three-weeks leave for a NFFE organizer made on September 12, 1975, was denied, only one weeks leave being granted, and this leave did not become effective until September 26, 1975. NFFE contends that since the mail ballots in the instant runoff election were mailed on September 22, 1975, the delay on the part of GSA in granting leave to its organizer was to show opposition to NFFE and, had the NFFE organizer been granted the leave requested before the Sepember 22, 1975, mailing of ballots it may have affected the election outcome.

NFFE attempts to support this conclusion with the statement of its chief union negotiator that " . . . /the NFFE organizer/ informed me that employees at some locations that he contacted after September 24, 1975, told him that they had already voted and that they might have voted for NFFE if they had talked to /him/ earlier." This is the only information supplied by NFFE in support of this objection and it does not, in my opinion warrant a setting aside of the election. The mere fact that an AFGE representative was granted a greater amount of leave before the mailing of ballots while the NFFE representative was not is not sufficient to demonstrate GSA bias relating to the instant election. Further, the statement of the chief union negotiator given above is not supported by any evidence. It relates to what an unspecified number of employees told someone else what they may have done

12/ Reference is made to another individual Federal Protective Officer who was allegedly refused supervisory training after the election despite the favorable recommendation of the GSA Buildings Manager in Detroit. This objection was not received by the Chicago Area Office during the five-day period for filing timely objections, and was a part of the November 3, 1975, letter referred to above. While the supplemental materials supplied by letter have been accepted as timely, no new objections beyond the five-day requirement can be considered. Therefore, it is overruled pursuant to Section 202 20(b) of the Regulations of the Assistant Secretary.

had conditions been otherwise. I see here no reason to set aside the election on these grounds and conclude that no conduct occurred which improperly affected the results of the election.

Based upon all of the foregoing and the entire circumstances in this proceeding, I conclude that no improper procedural error occurred with regard to the election conducted on October 20, 1975, and additionally conclude that no improper conduct occurred which improperly affected the results of the election. Therefore, all the objections in this case are hereby overruled in their entirety.

Pursuant to Section 202.20(f) and 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Acting Regional Administrator as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business March 17, 1976.

Dated at Chicago, Illinois this 2nd day of March, 1976.

David R. Dalton, Acting Regional Administrator
United States Department of Labor
Labor-Management Services Administration
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-16-76

739

Mr. Joe C. Wilson
National Vice President
National Association of Government
Employees
3300 West Olive Street - Suite A
Burbank, California 91505

Re: Travis Air Force Base, California
Case No. 70-5032(CA)

Dear Mr. Wilson:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges a violation of Section 19(a)(3) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are not warranted. Thus, in my view, the evidence did not establish that the Activity had any knowledge of the activities of the American Federation of Government Employees' (AFGE) non-employee representative, nor was there any evidence provided which would establish a reasonable basis for the allegation of improper assistance to the AFGE on the part of the Activity.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

REGIONAL OFFICE

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: 415-556-5915

March 5, 1976

Mr. Joe C. Wilson
National Vice President
National Association of
Government Employees
3300 West Olive Street
Burbank, CA 95105

Re: Travis Air Force Base
Case No. 70-5032

Dear Mr. Wilson:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. It is your position that the Respondent knew that AFGE intended to organize the General Schedule (GS) employees who are currently represented by NAGE and that Respondent's failure to take measures to prevent an AFGE non-employee representative from entering the work sites and soliciting signatures from these GS employees constituted assistance to a non-equivalent union in violation of Section 19(a)(3) of the Order. Additionally, you have asserted that the AFGE non-employee representative solicited signatures fraudulently, and that this alleged fraudulent action by the AFGE non-employee representatives constitutes a violation of Section 19 of the Order by the Respondent.

The investigation revealed that, while NAGE is the exclusive representative of a unit of GS employees at Travis Air Force Base, AFGE is the exclusive representative of other bargaining units at Travis and legally has access to the Base. On May 15, 1975, an AFGE non-employee representative contacted two employees who are included in NAGE's bargaining unit at their work sites at Travis. One of these employees signed AFGE's showing of interest petition during her visit with the AFGE non-employee representative.

Even assuming that Respondent may have known that AFGE had the intention to organize the GS employees represented by NAGE, no evidence has been presented to indicate that on May 15, 1975, the date of occurrence of the only conduct under attack, the Respondent had knowledge that the AFGE non-employee representative was soliciting signatures among the employees exclusively represented by NAGE. Therefore, there is no basis for concluding that Respondent provided improper assistance to AFGE.

Additionally, I conclude that there is no basis for construing an alleged fraudulent action committed by the AFGE non-employee representative while soliciting signatures as an unfair labor practice by the Respondent since there is no evidence that at the time of the incident the Respondent even knew that the AFGE non-employee representative was soliciting signatures.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on March 22, 1976.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-19-76

740

Mr. Russell M. Butler
Vice President, Local 2221
American Federation of
Government Employees
208 North Cedar Street
Newark, Ohio 43055

Re: Aerospace Guidance and Metrology Center
Newark Air Force Station
Newark, Ohio
Case No. 53-8531(CA)

Dear Mr. Butler:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the instant complaint, which alleges violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

I find no merit in the Respondent's argument that the instant complaint is barred by Section 19(d) of the Order. The grievance referred to by the Respondent involves an issue different from the issues raised by the allegations of the complaint.

In light of the Federal Labor Relations Council's forthcoming policy statement regarding an employee's right of representation at meetings with agency management (see the attached Information Announcement of the Council), I have decided to defer consideration of that portion of your request for review involving the 19(a)(1) allegation of the complaint until such time as the Council issues its statement. Inasmuch as there is insufficient evidence to establish a reasonable basis for the alleged violations of Section 19(a)(2) and (4) of the Order, your request for review with respect to these allegations is hereby denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR MANAGEMENT RELATIONS
CHICAGO REGION

UNITED STATES AIR FORCE,
AEROSPACE GUIDANCE AND METROLOGY CENTER,
NEWARK AIR FORCE STATION, OHIO,

Respondent

and Case No. 53-08531(CA)

GARY E. DAVIS, An Individual,

Complainant

The Complaint in the above-captioned case was filed on October 20, 1975, in the office of the Cleveland Area Administrator. It alleges a violation of Sections 19(a)(1), (2), and (4) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It does not appear that further proceedings are warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in its entirety.

The Complainant alleges that the Respondent violated Section 19(a)(1), (2), and (4) in regards to his attendance at a Race Relations Class and denied him union representation at a meeting to discuss the matter.

The Complainant had attended Phase I of a Race Relations Class and states that it caused him emotional stress. When scheduled for Phase II of the classes, the Complainant agreed to attend along with the Newark Air Force Station Commander, who stated that the Complainant would be excused from the class should it disturb the Complainant. The Complainant failed to attend the class scheduled for April 21 and 22, 1975, due to alleged illness. On April 23, 1975, the Complainant met with the Commander regarding his failure to attend the class. The Complainant was denied union representation at the meeting, and was given two weeks to supply the Respondent with medical evidence supporting his contention that the classes would aggravate emotional problems. After receiving this medical information, the Respondent agreed to defer the Complainant's required attendance at the classes pending continued reports of his psychiatric progress.

The Complainant contends that the Respondent violated Section 19(a)(1) of the Order by denying him a union representative at a meeting which could have resulted in disciplinary action. The meeting was scheduled to be held with the Complainant as an individual employee with respect to a

particular incident that had no relationship to union activity. I find, in the circumstances, that the meeting amounted to no more than a possible counselling session, and did not constitute a formal discussion, and that hence the Respondent did not owe the Complainant the privilege of having a union representative present. 1/

Complainant alleges that the Activity violated Section 19(a)(2) of the Order by discriminating against the Complainant in scheduling him to attend the Race Relations Classes due to his union activities. I find no evidence submitted that goes beyond what is discussed hereinabove with regard to Section 19(a)(1), and find further that it is relevant with regard to this, and the Section 19(a)(1) allegation, that the Respondent in fact allowed the Complainant time to work out his problems regarding the attendance of class and did not discipline him.

Finally, Complainant contends that the Activity violated Section 19(a)(4) of the Order by discriminating and attempting to intimidate him by threatening him "with disciplinary action during a telephone call to my home". I find the record completely devoid of evidence with regard to the contents of such a phone call. Even if the Complainant is referring to the vague description in the pre-complaint charge, I find nothing there either that would support an allegation of unlawful action or threat within the meaning of the Executive Order.

Having considered carefully all the facts and circumstances in this case, including the charge, the Complaint, the positions of the parties, and all that which is set forth above, the Complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a Request for Review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the Request for Review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor Management Relations, Attention: Office of Federal Labor Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business April 1, 1976.

Dated at Chicago, Illinois, this 17th day of March, 1976.

Attachment: LMSA 1139

David R. Dalton, Acting Regional Administrator
U. S. Department of Labor, LMSA
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

1/ See Department of Defense, National Guard Bureau, Texas Air National Guard, A/SLMR No. 336.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-19-76

741

Mr. David J. Butler
President, AFGE Local 2667
2401 E Street, N. W.
Washington, D. C. 20506

Re: Equal Employment Opportunity Commission
Washington, D. C.
Case No. 22-6503(CA)

Dear Mr. Butler:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint, which alleges violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis has not been established for the portion of the complaint concerning restrictions placed on your use of leave time and, consequently, further proceedings on that allegation are unwarranted. Moreover, as the allegation that the Activity placed limitations on access to certain employee records, including leave records, was raised for the first time in the request for review, it cannot be considered by the Assistant Secretary. In this regard, see Report on Ruling, No. 46 (copy enclosed). However, contrary to the Regional Administrator, I find that a reasonable basis for those portions of the complaint concerning your May 1975 performance appraisal and your subsequent failure to be promoted has been established. Thus, in my view, the Activity's conduct with regard to those matters raises material issues of fact which can best be resolved on the basis of evidence adduced at a hearing.

Accordingly, your request for review is granted, in part, and the instant case is remanded to the Regional Administrator, who is directed to reinstate the complaint consistent with the findings herein and, absent settlement, to issue a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA 19
TELEPHONE 215-597-1

February 13, 1976

Mr. David J. Butler, Acting President
AFGE Local 2667
2401 E Street, N.W.
Washington,D.C. 20506
(Cert.Mail No. 782151)

Re: Equal Employment Opportunity Commission
Case No. 22-6503(CA)

Dear Mr. Butler:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

In your complaint, you allege that the Equal Employment Opportunity Commission restricted your leave, downgraded your employment appraisal and failed to promote you because of your union affiliation and activities as Shop Steward in violation of 19(a)(1) and (2) of the Executive Order.

You contend that during your first year of employment with the Respondent your leave record was worse than the past year but nevertheless you received an outstanding job appraisal and a promotion. You claim that you only encountered difficulties with your appraisal and leave after you became an Alternate Shop Steward.

In its answer to the complaint the Respondent contends that you have history of excessive tardiness, and excessive use of annual leave without prior notice and that your supervisor has been overly reasonable in approving annual and sick leave. The Respondent claims that the so-called "restrictions" on leave were merely a response to your constant abuse of leave. The Respondent also contends that your appraisal was graded according to the judgment of your supervisor and any mention of your involvement in "employee associations" refers to other office activities such as assisting employees with filing their tax returns and your discussions with office employees concerning their participation in group sports activities.

Finally, the Respondent contends that your non-selection was a judgment decision by the selecting official who did not consider you best qualified for the position.

The investigation revealed that you were cited for tardiness and continual use of early morning leave in your 1973-1974 and 1974-1975 employee performance appraisals. On January 9, 1975 you became Alternate Shop Steward. On April 16, 1975 you received a memorandum from your supervisor restricitng the use of annual and sick leave. Every few weeks thereafter you received memoranda questioning the use of various amounts of annual leave. On May 8, 1975 the Respondent issued an appraisal of your work which included criticism for using official time for "employee associations activities". You objected to this insertion in the appraisal because, you alleged, it "discredited" you by improperly referring to your union activities. On June 19, 1975 you were notified that you were not selected for a GS-6 Voucher Examiner position.

You contend that the alleged violations began at a time coincident with your supervisor's discovery of your union affiliation. However, you presented no evidence to support your allegation that the Respondent's actions in restricting your use of annual leave, "down-grading" your performance evaluation and non-selecting you for a promotion was in retaliation for your union activity. Mere knowledge of union affiliation, standing alone, is not enough to establish a basis for a complaint that a 19(a)(2) violation occurred. 1/

No evidence has been presented by you which establishes a nexus between the Respondent's alleged actions and any union activities on your behalf. No evidence was submitted showing union animus. There is insufficient evidence that the Respondent's alleged conduct was motivated in whole or part by anti-union consideration. Therefore, I find that you have not established a reasonable basis that a 19(a)(1) or 19(a)(2) violation has occurred and I am dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attenti Office of Federal Labor-Management Relations, U.S. Department of Labor,

1/ Department of Housing and Urban Development, Detroit Area Office, Detroit, Michigan, A/SLMR No. 414. Veterans Administration, Veterans Benefits Office, A/SLMR No. 296.

Washington,D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business March 1, 1976.

Sincerely,

Kenneth L. Evans

Kenneth L. Evans
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-19-76

742

Mr. Robert F. Griem
West Coast Counsel, National Association
of Government Employees
3300 W. Olive Avenue, Suite A
Burbank, California 91505

Re: National Weather Service
Los Angeles, California
Case No. 72-5655(CA)

Dear Mr. Griem:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of that portion of the complaint in the above-named case, which alleges a violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended. Your request for review does not dispute the dismissal of the Section 19(a)(2) portion of your complaint, and the Regional Administrator's findings in this regard are affirmed.

Under all of the circumstances, I find that a reasonable basis for the Section 19(a)(1) and (6) allegations of the complaint has been established. Thus, in my view, material issues of fact and policy have been raised herein which can best be resolved on the basis of evidence adduced at a hearing.

Accordingly, your request for review is granted, and the case is remanded to the Regional Administrator, who is directed to reinstate the Section 19(a)(1) and (6) portion of the complaint and, absent settlement, to issue a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

January 21, 1976

Mr. Robert Griem
NAGE West Coast Counsel
3300 West Olive Avenue, Suite A
Burbank, CA 91505

Re: National Weather
Services, Los Angeles
NAGE Local R12-72
Case No. 72-5655

Dear Mr. Griem:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It is concluded that the complaint is not precluded by Section 19(d) of the Order since the complaint is concerned with changes in the work schedule while the grievance is concerned with alleged inaccuracies in the guidance schedule.

However, it does not appear that further proceedings are warranted inasmuch as a reasonable bases for the complaint has not been established. In this regard, it is noted that no evidence was submitted with respect to a violation of Section 19(a)(2) of the Order.

As for the 19(a)(6) allegation, the evidence indicates Respondent conferred with Complainant on numerous occasions concerning a proposed change in duty hours and formally announced the change only after Complainant demonstrated its position had not changed. Moreover, Complainant did not request to confer on the impact of the change during the 35 day period between the announcement and the effective date of the change.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on February 5, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-19-76

743

Mr. Robert J. Canavan
General Counsel
National Association of Government
Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: Massachusetts Army National Guard
Boston, Massachusetts
Case No. 31-8853(RO)

Dear Mr. Canavan:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Objections in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the allegation, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

Massachusetts Army National Guard Boston, Massachusetts	- Activity	
- and -		
National Association of Government Employees, Local R1-154	- Petitioner	Case No. 31-8853(RO)
- and -		
National Federation of Federal Employees, Local 1629	- Intervenor	

REPORT AND FINDINGS

ON

OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on October 22, 1975, an election by secret ballot was conducted under the supervision of the Area Administrator, Boston, Massachusetts. The election was conducted entirely through the United States Mail with ballots mailed to all eligible voters on the afternoon of Friday, November 14, 1975: All ballots properly returned through the United States Mail by Noon, Monday, December 1, 1975,were tallied.

The results of the election, as set forth in the Tally of Ballots, are as follows:

Approximate number of eligible voters _____ 650

Void ballots _____ 5

Votes cast for National Federation of Federal Employees Local 1629	242
Votes cast for National Association of Government Employees Local R1-154	190
Votes cast against (exclusive recognition)	28
Valid votes counted	460
Challenged ballots	22
Valid votes counted plus challenged ballots	482

Challenged ballots are not sufficient in number to affect the results of the election.

Timely objections to conduct improperly affecting the results of the election were filed December 8, 1975, by the petitioner. The objections are attached hereto as Appendix A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Administrator has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to the objections involved herein.

1. The NAGE's Objections

The National Association of Government Employees (hereinafter NAGE) asserts that on or about November 5, 1975, agents of the National Federation of Federal Employees Local 1629 (hereinafter NFFE) caused to be distributed and circulated among employees eligible to vote in the election a circular, a copy of which is marked "A" and is attached to NAGE's objections. It submitted evidence that this circular was received by some unit employees at their homes in the mail about November 12, 1975.

At the top of this circular is the full name of the National Federation of Federal Employees in capital letters with the address and telephone number of its National Headquarters directly below it. This is followed by a headline which says, "NFFE DISAGREES WITH NAGE FIGURES." An arrow goes from this headline to the third paragraph of a re-print of an article written by the columnist Jack Anderson which appeared in

the October 31, 1972, edition of The Washington Post. The paragraph in the article is enclosed in a box and says, "Lyons Leads not only the 100,000 - strong National Association of Government Employees but, embarassingly for him in the present circumstances, the 30,000-member International Brotherhood of Police Officers." Directly below the headline and above the article are two paragraphs, the first of which reads, "For the article reprinted below, NAGE presumably told the Washington Merry-Go-Round, for its Washington Post article of October 31, 1972, that 'Lyons heads ... the 100,000-strong National Association of Government Employees...'" The second paragraph relates membership figures for the NAGE in the federal sector for the years 1972, 1973 and 1974. The circular says these figures are from published records of the U. S. Civil Service Commission. The reverse side of the circular continues to discuss membership figures and contains a table comparing the number of federal employees represented by six different unions in each of five years. The circular ends with the statements, "Don't be taken in by NAGE Propaganda! Someone is not telling the truth about the size of Federal employee organizations. THE FACTS SPEAK CLEARLY VOTE INDEPENDENT...VOTE NFFE."

The NAGE objects to this circular because "its true purpose was to provide an excuse to dredge up an article written by columnist Jack Anderson dated October 31, 1972, which in part stated that NAGE's President was under 'double barreled federal investigation' in connection with possible 'perjury in a Mafia-related case' and for possible misuse of union funds. The article also stated that NAGE's President had associated himself with known underworld figures."

NAGE asserts that the article was reprinted by NFFE "even though it knew that the 'double barreled federal investigation' referred to in the article had long since resulted in a clean bill of health for both NAGE and its President." NAGE argues that NFFE knew that the inflammatory tone of the article would have a greater impact on voters in Massachusetts because it alleges the NAGE President associated with "known Massachusetts underworld figures.....".

This NFFE circular was in the hands of the NAGE President on November 6, 1975, which was more than one week before the ballots were mailed to eligible voters. NAGE did reply to the NFFE circular by mailing its own flier on or about November 12, 1975, a copy of which is attached as Appendix B. Nevertheless, NAGE contends that the laboratory conditions necessary to allow a free choice by the voters were destroyed by the use of the Anderson column. It argues that the fears raised by emotionally charged cue words in the Anderson column could not be calmed by any reply; and consequently, it concludes that the use of the Anderson column, per se, constitutes objectionable conduct.

The NAGE also argued that a subsequent circular distributed by the NFFE about membership figures demonstrates it did not need to use the Anderson column to make its point about membership statistics, thereby showing NFFE's intent must have been malevolent in distributing the column. Finally, it argues that the use of a column three years old is all the more objectionable with the passage of time, but it assigns no reason for this conclusion.

2. The NFFE's Response

The NFFE responds that the number of circulars it wants to distribute in a campaign is strictly an internal affair. It says it made its disbributions because "NAGE persists in claiming on its letterhead that it is 'the largest Independent Government Union in the Country".

NFFE argues that the voters are intelligent individuals who are capable of separating fact from fiction. NFFE states that the NAGE had sufficient time "to refute the Anderson Flyer". NFFE argues that the Anderson column appears to be substantiated in every major respect by the information developed in hearings before the Senate Commerce Committee held on June 6, 7, 8 and 29, 1972. NFFE then asserts that the NAGE flier was "replete with mis-statements, outright lies and untruthful quotes falsely attributed to a Department of Labor Official".

3. The Regional Administrator's Findings

The Assistant Secretary has affirmed the use of the standards set forth in Hollywood Ceramics Co. Inc., 140 NLRB 221, for evaluating campaign propaganda to determine whether an election should be set aside. See Army Material Command, Army Tank Automotive Command, Warren, Michigan, A/SLMR No. 56. The standards set forth in the Hollywood Ceramics case have been summarized as follows: "[A]n election should be set aside only where there has been a misrepresentation or other similar campaign trickery which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election."

I find that the thrust of the editorial comment contained in the NFFE circular was the relative membership strength of the NFFE and the NAGE, brought out by references to specific membership figures contained in an article which was reproduced in its entirety. Although the article did refer to alleged Mafia connections of an officer of the NAGE, it is clear that there was no

editorial comment upon the truth or falsity of such allegation and no attempt to affix the imprimatur of truth to the "Mafia"-link assertions of the article.

I find that the timing of the distribution of this circular by the NFFE was not so close to the time voters would be receiving and marking their ballots as to prevent the NAGE from making an effective reply. This is particularly so where the President of the NAGE had a copy of the circular a full week before the ballots were even mailed to eligible voters. Indeed, the NAGE did reply to the NFFE circular by mailing out its own flier on or about November 12, 1975. Such a mailing would be calculated to reach eligible voters before they received their ballots which were mailed on November 14, 1975. Therefore, the voters had before them the positions of both labor organizations to evaluate for themselves prior to the time they cast their ballots.

NAGE's contention that NFFE did not need to distribute the circular containing the Anderson column to make its point about membership figures implies that limits exist or should be placed on the right of competing labor organizations to determine for themselves the extent of discussion to be devoted to certain campaign issues. Such a notion is contrary to the basic policy of allowing labor organizations great latitude in the intensity and scope of the propaganda by which they seek to influence voters so long as they do not resort to fraud or trickery. See Army Material Command, supra, at page 5 of the Hearing Examiner's Report and Recommendations.

The NAGE's assertion that "the use of the Anderson column should become all the more objectionable with the passage of time" is supported by no reasoned arguments. It could just as easily be argued that the use of a three-year old newspaper column is less objectionable because the older it gets the less credence it will be given by voters as an accurate reflection of the contemporary scene.

Based on the foregoing discussion, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, NAGE's objections are found to have no merit and are dismissed in their entirety.

Having found that no objectionable conduct occurred affecting the results of the election, the parties are advised hereby that a Certification of Representative in behalf of the National Federation of Federal Employees, Local 1629, will be issued by the Area Administrator, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business March 1, 1976.

Dated: February 13, 1976

Manuel Eber

MANUEL EBER
Acting Regional Administrator for
Labor-Management Services

New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-23-76

Mr. Earl M. Ricketson
National Representative
American Federation of Government Employees, AFL-CIO
P.O. Box 328
Alma, Georgia 31510

744

Re: Social Security Administration
Macon, Georgia District Office
Case No. 40-6648(RO)

Dear Mr. Ricketson:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Objections in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted.

Accordingly, and noting also that evidence or information that is furnished for the first time in a request for review, where the party has had adequate opportunity to furnish it during the investigation period and prior to the issuance of the Regional Administrator's decision, shall not be considered by the Assistant Secretary (see attached Report on Ruling of the Assistant Secretary, Report No. 46), your request for review seeking reversal of the Regional Administrator's Report and Findings on Objections, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

SOCIAL SECURITY ADMINISTRATION MACON, GEORGIA DISTRICT OFFICE Activity and LOCAL 2664, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO Petitioner	)	Case No. 40-6648(RO)

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the provisions of an Agreement for Consent Election approved on November 6, 1975, an election by secret ballot was conducted under the supervision of the Area Director, Atlanta, Georgia, on November 20, 1975.

The results of the election, as set forth in the Tally of Ballots, are as follows:

Approximate number of eligible voters	99 1/
Void ballots	0
Votes cast for American Federation of Government Employees, Local 2664	36
Votes cast against exclusive recognition	48
Challenged ballots	0
Valid votes counted plus challenged ballots	84

Timely objections to conduct improperly affecting the results of the election were filed on November 26, 1975, by Petitioner. The objections are attached hereto as Appendix A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Director has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to each of the objections involved herein.

The election was conducted in a unit consisting of all non-professional employees of the District Office in Macon plus the four branches in Griffin, Warner Robins, Dublin, and Milledgeville, Georgia, excluding the mandatory classifications.

Petitioner was granted exclusive recognition for a unit of District Office employees in 1967. On July 3, 1975, Ellen Brown filed a decertification petition 2/ on behalf of employees in the unit represented by Petitioner. The DR petition was withdrawn on November 18, 1975.

Objection Number 1-----I shall treat the following as the first objection:

> Management has purposely and deliberately behind the scenes manouvered, reassigned, and influenced personnel in such a manner so that they influenced an anti Union attitude among the employees within the Complex.

1/ The Tally incorrectly stated the number of eligible voters. The approximate number of eligible voters should have read "89".

2/ Case No. 40-6496(DR).

The Activity denies the charge that it engaged in actions aimed at influencing an anti-union attitude among employees.

Petitioner has furnished no particulars, such as dates, time and places of alleged acts tending to influence voters nor is there any evidence employees were reassigned. Section 202.20 of the Regulations of the Assistant Secretary provides that the objecting party shall bear the burden of proof regarding all matters raised in its objections. The Petitioner has furnished no evidence in support of the objection and has therefore failed to bear the burden of proof as required by the Regulations. Based on the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection Number 1 is found to have no merit.

Objection Number 2-----I shall treat the following as the second objection:

> Management has strictly enforced regulations in the District Office, where Union strength is, regarding the amount of time taken for lunch and was extremely lax with the Branch Offices where no Union strength existed, allowing at least 15 minutes more time for none union areas than was allowed in union areas. Then open statements were made by Management that the Union was responsible for changes in lunch periods. Other anti Union statements made by Management (Theresa Usery), "it was the employees determination to become involved with these Unions".

Investigation reveals that in early 1975 the lunch hour in the District Office was shortened from 45 minutes to 30 minutes. The lunch period was subsequently reduced from 45 minutes to 30 minutes in the branch offices after Petitioner expressed the view that employees in the unit represented by Petitioner were being treated differently from the non-represented employees in the branches. The petition herein was filed on October 9, 1975.

It is the Activity's position that the change in lunch period was made solely on the basis of operational effectiveness. It denies that the change was motivated by anti-union considerations. It states that it is possible that the 30-minute lunch period was not enforced consistently in all branch offices, but that in any event, the decision to change the lunch hour was made and implemented before a representation question was raised.

The change in duration of the lunch period occurred prior to the filing of the representation petition. The Assistant Secretary has held in Report Number 58 that conduct occurring prior to the filing of the election petition may not be considered as grounds for setting aside the election. Petitioner had available to it the complaint procedures of the Assistant Secretary if it desired to complain the decision to change the lunch period was improper. Therefore, it may not raise the issue of the change in lunch period as improper conduct which may have affected the election.

Regarding the alleged anti-union statement, Petitioner has submitted no particulars as to when the alleged statement was made by Usery or to whom it was made. Moreover, there is no evidence that Usery is in fact a management official. Even if Usery did make the statement that "it was the employees determination to become involved with these Unions", standing alone, the statement is no more than an expression that it is the option of the employee to join, assist or "become involved with" the union. Petitioner has submitted no evidence that the statement was intended as a promise of benefit for voting against the union or a threat for voting for the union. In the absence of evidence that the statement by Usery was intended as a promise or threat, or that such a statement was in fact a promise or threat the statement is not objectionable. Under the circumstances, I find that no improper conduct occurred affecting the results of the election. Accordingly, Objection Number 2 is found to have no merit.

Objection Numbers 3 and 4-----I shall treat the following as the third and fourth objections:

> There is concrete evidence that those employees who are against the Union were allowed to campaign against the Union during working hours. The Union told Management that they were campaigning against the Union during working hours but Management failed to do anything about it, again showing their partiality to anti unionists.

> Management allowed the use of facilities, (FTS telephone) to be used by Ellen Brown, (anti union), for long distance calls to the Branch Offices to campaign against the Union.

Petitioner has furnished a signed statement of employee Nancy Baird in which Baird describes a telephone conversation she overheard between Ellen Brown in the District Office and Brenda Pennington, an employee in the Milledgeville Branch. According to Baird, Brown and Pennington were discussing the election and Brown was campaigning against the union. The conversation took place the same day Brown was to conduct an anti-union meeting in the Milledgeville office after work.

The Activity states it has no knowledge of either Brown or any other employee having used the Federal Telecommunications System (FTS) to campaign for or against the union.

The only evidence furnished by Petitioner is the statement of the Brown-Pennington conversation. It indicates that a unit employee actively participated in an anti-union campaign. A meeting was scheduled to be conducted in one of the branches on the same day of the Brown-Pennington conversation. There is no evidence as to what Brown said nor is there any evidence that the Activity was aware of the conversation or that the Activity authorized, condoned or otherwise approved the use of the FTS by Brown or any other employee for campaigning against Petitioner. Absent any evidence that the Activity was either aware of, condoned or approved the use of the FTS for an anti-union campaign, there are no grounds for setting aside the election. Under the circumstances, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection Numbers 3 and 4 are found to have no merit.

Objection Number 5-----I shall treat the following as the fifth objection:

> . . . the Union had asked permission to mail campaign literature to the Branch Offices to be posted. Management refused to co-operate in this request until after it was learned that Management was providing this service to Ellen Brown who was mailing anti Union literature and it was being posted by Management in the Milledgeville Branch Office.

Petitioner has furnished no evidence to support its allegation.

The Activity concedes that on a Friday Petitioner was denied permission to mail literature to a branch manager for posting on bulletin boards. The Activity states that Ellen Brown informed the District Manager on the following Monday morning that she had asked one of the branch managers during the weekend to post a notice concerning a no-union campaign. The branch manager complied with Brown's request, but immediately after being notified by the District Manager of the Activity's policy on not posting campaign literature, the district manager notified Petitioner that the Activity would likewise post union materials. According to the Activity, Petitioner did request and the branch manager posted Petitioner's campaign material to balance the privilege accorded Brown.

It is the Activity's position that it took reasonable action to demonstrate its neutrality. When it was found that a branch manager failed to adhere to the "no posting policy", the Activity balanced the equities by giving the Petitioner equal benefits. It states that the adjustment was immediate and there was no time lag which permitted the non-union group more posting time than Petitioner.

Petitioner has submitted no evidence that the posting by the branch manager was done deliberately to accord disparate posting privileges. From the Activity's account, it can be concluded that the branch manager did not intentionally violate the Activity policy of not posting any campaign material. Even if the branch manager violated the policy of not posting literature when he posted Brown's notice, he immediately rectified the imbalance by offering Petitioner the same privilege that was accorded to Brown. There is no evidence to indicate that the span of time between the posting of the anti-union material and notification to Petitioner was of significant duration. In the absence of any evidence that the branch manager was aware of a no-posting policy when he posted Brown's notice, or that there was a significant time lag between posting and notifying Petitioner that it could have union literature posted, there is no basis for a conclusion that disparate posting privileges were accorded Brown. Under the circumstance, I find that no improper conduct occurred affecting the result of the election. Accordingly, Objection Number 5 is found to have no merit.

Objection Number 6-----I shall treat the following as the sixth objection:

> Management and Supervisors assisted in anti Union material used by Ellen Brown on November 5, 1975 there was a meeting between Ms. Brown and Ms. Carleen, a supervisor where discussion was held on material known to be anti Union kept by Ms. Brown in a red folder. When discovered Ms. Brown became flustered and nervous and quickly closed the folder.

The employee referred to by Petitioner is Carleen Rick, acting supervisor. On Wednesday, November 5, 1975, Brown and Riek were engaged in a conversation at Riek's desk.

Petitioner has submitted a statement by Cindy Hayes, employee of the District Office, in which Hayes states she observed Brown and Rick in the November 5 discussion. Hayes states that Brown had a red folder which was known to contain anti-union material and that when she approached Rick's desk, Brown quickly closed the folder and seemed embarrassed and nervous that Hayes had observed the conversation.

The Activity denies that there was a discussion of either pro-union or anti-union feelings between Riek and Brown. In support of its position, the Activity submitted a memorandum by Rick to the District Director in which she stated the conversation with Brown was in connection with the workload. Rick stated that at no time had she discussed with Brown any material in any folder related to union or anti-union activities.

The statement by Hayes does not state what, if anything, Hayes heard in the conversation between Brown and Rick. The Hayes statement represents merely her opinion that Brown and Rick were engaged in a discussion about anti-union material. There is no evidence that Hayes saw anti-union material or that Riek assisted Brown in either distributing literature or engaging in an anti-union campaign. In the absence of any evidence that Riek or any other supervisor either assisted or encouraged Brown to engage in anti-union activities, there are no grounds for setting aside the election. Therefore, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection Number 6 is found to have no merit.

Objection Number 7-----I shall treat the following as the seventh objection:

> On November 12, 1975, Ms. Brown was observed and overheard talking to Brenda Pennington an employee in Milledgeville Branch Office and she also campaigned anti union to Joyce Lee, all done within working hours and by company facilities. She was allowed these privileges by Management. The Union had gone to Management on several occasions but nothing was ever done about these incidents.

The voter eligibility list reflects that Joyce Lee is an employee of the District Office.

The statement Petitioner furnished by Nancy Baird, employee in the Milledgeville Branch, referred to in Objections 3 and 4 is also being considered in connection with the allegation in Objection No. 7. That statement concerns a conversation Baird overheard between Brown and Pennington wherein Brown allegedly campaigned against the union during an FTS call.

The Activity contends that its investigation of the alleged telephone conversation reveals that the discussions were totally work related and did not involve union representation in any way.

Petitioner has submitted no evidence that the Activity was aware of the use of the FTS for anti-union campaigning. Petitioner has furnished no evidence concerning any role the Activity played in the conversations between Brown and Pennington or Brown and Lee. Even if Brown made anti-union statements to Pennington and Lee on official time, without evidence that the Activity either condoned or approved such activity during work time, there is no basis for setting aside the election. Therefore, I find that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 7 is found to have no merit.

Objection Number 8-----I shall treat the following as the eighth objection.

> On the day of the election, November 20, 1975 Managements observer expressed several anti union remarks to the employees voting in the Milledgeville Branch Office.

In support of the objection Petitioner has submitted a statement of Janet Hobby who acted as Petitioner's observer at the election in the Milledgeville and Dublin Branches. According to Hobby, the Activity's observer at Milledgeville was anti-union and made anti-union statements in her presence on the morning of the election.

The Activity states that it has no knowledge concerning Petitioner's allegation. It states that the issue was not raised with the Department of Labor representative who supervised the election.

Petitioner has not detailed the nature of the anti-union remarks nor has it furnished any evidence that anti-union statements were made during the election or that eligible voters were present and heard the statements. Even if anti-union statements were made by the Activity's observer, such statements would not be grounds for setting aside the election unless it is demonstrated that voters were impaired in the exercise of their free choice. In the absence of evidence that employees were prevented from exercising their free choice, I conclude that no improper conduct occurred affecting the outcome of the election. Accordingly, Objection Number 8 is found to have no merit.

Objection Number 9-----I shall treat the following as the ninth objection:

> There was anti union literature posted on the bulletin boards in and around the voting place in Milledgeville Branch Office on election day, however, Management had removed the Union literature the day before the election. This was an unfair advantage Management exercised toward the Union and illustrated their anti Union attitude to the employees.

Voting in the Milledgeville Branch took place in the break room from 8:30 a.m. to 9:00 a.m. The bulletin board is located in the main office which is separated from the break room by a hallway.

The statement by Hobby referred to in Object Number 8 is also being considered in connection with Objection Number 9 inasmuch as Hobby states that there was "anti-union material posted in both the Milledgeville and Dublin voting areas". No other evidence in support of its allegation was furnished by Petitioner.

The Activity states that the Milledgeville bulletin board contained both union and anti-union material. It states that both types of material remained posted during the election. It denies that the union material was removed by management. An unsupported statement that management removed union literature the day before the election is insufficient basis to conclude that the Activity engaged in conduct which amounted to disparate treatment. In the absence of evidence that the Activity was responsible for removing union material, there is no basis for setting aside the election. Therefore, I find that no improper conduct occurred affecting the outcome of the election. Accordingly, Objection Number 9 is found to have no merit.

Objection Number 10-----I shall treat the following as the tenth objection:

> Another example of Management not playing a neutral role is where Shirley Scott was heard saying to Barbara Hammock, (both Management), "I'm sure we will win", meaning that the Union would be voted out. Management is not to take sides in these elections, yet they have tainted this election with behind the scenes and open actions committed by them.

Shirley Scott and Barbara Hammock are employees of the District Office who were ineligible to vote in the election.

Petitioner's statement in support of its allegation is a statement by Cindy Hayes in which she states that on November 19, 1975, she walked into the tele-type room and overheard Scott say to Hammock, "I feel sure we will win." According to Hayes, Scott and Hammock stopped talking when they discovered Hayes' presence.

The Activity takes the position that any such discussion was a private discussion between the two individuals. The Activity presented statements from Scott and Hammock in which they deny discussing the election.

Petitioner has presented insufficient evidence on which a conclusion can be drawn that Scott and Hammock made statements to the effect that Petitioner would lose the election. Even if such statements were made, there is no evidence that Hayes was influenced by what was said; nor is there evidence that any other employees either heard the conversation or were influenced by it to the extent that they were prevented from exercising their free choice. In the absence of evidence that Hayes or any other employee was prevented from exercising his free choice, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection Number 10 is found to have no merit.

Having found that no objectionable conduct occurred improperly affecting the results of the election, the parties are advised hereby that a Certification of Results of Election will be issued by the Area Administrator, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business February 25, 1976.

Labor-Management Services Administration

Dated: February 10, 1976

LEM R. BRIDGES, Assistant Regional
Director for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

7-27-76

745

Mr. Seaton B. Neal, Jr.
President/Executive Secretary
American Federation of Government
Employees, Local 2047
P. O. Box 3742
Richmond, Virginia 23234

Re: Defense General Supply Center
Case No. 22-6569(CA)

Dear Mr. Neal:

This is in connection with your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Acting Regional Administrator issued his decision in the instant case on May 25, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on June 9, 1976. Your request for review postmarked on June 8, 1976, was received by the Assistant Secretary subsequent to June 9, 1976.

Accordingly, since your request for review was filed untimely, the merits of the subject case have not been considered, and your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

May 25, 1976

Mr. Adam Wenckus, President
AFGE, Local 2047, AFL-CIO
P.O. Box 3742
Richmond, Va. 23234
(Cert. Mail No. 453110)

Re: Defense General Supply Center
Case No. 22-6569(CA)

Dear Mr. Wenckus:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

On December 12, 1975, you filed a complaint against the Defense General Supply Center alleging that the Respondent had violated Sections 19(a)(1) and (6) of the Order by refusing to furnish information pursuant to the parties' negotiated agreement, which information had previously been furnished to you. The information you requested included names of employees referred for promotion, those nominated for awards, selected for reduction in force (RIF), suspected of leave abuse or not selected for promotion when entitled to priority consideration. The reason given by the Activity for withholding this information was that the Privacy Act of 1974 precluded the disclosure of such information after September 25, 1975.

Prior to filing the complaint being considered now, however, the union filed a suit in U.S. District Court, Richmond, Virginia, seeking to enjoin the Activity from withholding the information previously provided under the contract. The relief you seek is essentially the same. Both parties in their pleadings have filed motions for summary judgment and the case is now before the court for consideration.

Section 12(a) of the Executive Order states that an agreement between an agency and a labor organization is subject to the requirement that "...in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities." The Activity has taken the position that a law passed by Congress during the pendency of the contract makes it impossible for them to give you the information you seek. You are asking the Assistant Secretary to give you the same relief you request of the courts.

The dispute is whether the Privacy Act has affected the administration of the contract. There is nothing before me to indicate that the Activity has otherwise exhibited any bad faith in its actions. As a matter of fact, the record shows that the Activity will give you the names of employees nominated for awards and referred for promotion and would give you RIF retention regulations and copies of RIF notices in a sanitized form. It also advised that it would provide employees with extra copies of other information previously provided under the contract and tell employees that extra copies are enclosed should employees choose to give them to your organization.

I find that you have not established a reasonable basis that a 19(a)(1) or (6) violation has occurred and I am, therefore, dismissing the complaint in this matter. The proper forum for determining the applicability of the Privacy Act is the Federal Courts and not the Assistant Secretary.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 9, 1976.

Sincerely,

Frank P. Willette

Frank P. Willette
Acting Regional Administrator

cc: Roger Simboli,Director
Office of Civilian Personnel
Defense General Supply Center

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

8-4-76

746

Stephen E. Appell, Esq.
Special Assistant to Executive Committee
National Labor Relations Board Union
16 Court Street
Brooklyn, New York 11241

Re: National Labor Relations Board
Case No. 22-6418(CA)

Dear Mr. Appell:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dimissal of the instant complaint alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings on the complaint are unwarranted. Thus, in my view, the instant dispute concerns the parties' differing and arguable interpretation of their negotiated agreement, as distinguished from a clear unilateral breach of such agreement. It has been held previously that the resolution of such dispute lies within the grievance-arbitration machinery of the parties' negotiated agreement rather than through the unfair labor practice procedures of the Executive Order. See e.g. Department of Army, Watervliet Arsenal, Watervliet, New York, A/SLMR No. 624.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dimissal of the instant complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

January 14, 1976

Mr. Richard J. Roth
District 1 Vice President
National Labor Relations Board Union
16 Court Street
Brooklyn, New York 11211
(Cert. Mail No. 137938)

Re: National Labor Relations Board
Case No. 22-6418(CA)

Dear Mr. Roth:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation revealed that on December 9, 1974, the National Labor Relations Board Union signed a two-year agreement with the NLRB covering field office professional employees. On January 8, 1975, Leonard Miller, a Compliance Officer, filed a grievance at Step 1 of the above collective bargaining agreement. He alleged that his annual professional appraisal was not reflective of his ability. The grievance was denied at Step 1 and later at Step 2 (by the Regional Director) on the grounds that it was premature because Miller's evaluation was being reviewed by the Appraisal Review Board and no final appraisal had been given. Miller then filed a grievance at Step 3 with the Associate Counsel. At that time, the Appraisal Review Board upheld the supervisor's evaluation of Miller. The Associate Counsel then remanded the grievance back to Step 2 for a decision of the merits. The NLRB's remand action apparently was based on its interpretation of Article XII Section 1 of the Agreement which states that grievances should be settled at the lowest possible organizational level (Step 2).

You contend that the remand action constitutes a unilateral change in the terms of the agreement and that the NLRB violated Sections 19(a)(1) and 19(a)(6) of the Order when it unilaterally changed the terms of the Agreement without negotiating with the Exclusive Representative. The Assistant Secretary has held that

he would not consider a dispute involving the interpretation of an existing agreement in the context of an unfair labor practice but could leave the parties to resolve such issues in accordance with the provisions of the collective bargaining agreement. 1/

In my view, the circumstances presented indicate a disagreement over interpretation of the agreement and should be resolved under the procedures set forth in the agreement. You also contend that the NLRB's failure to take Miller's grievance to arbitration immediately, constitutes an unfair labor practice. In previous decisions, the Assistant Secretary held that a unilateral refusal to arbitrate pursuant to the negotiated agreement violates 19(a)(6) if the union is not consulted with beforehand. 2/ In this case, there is no outright refusal to arbitrate. The NLRB requests that the question of arbitrability be tested pursuant to Section 205.1 of the Rules and Regulations of the Assistant Secretary.

The evidence shows that the Respondent has offered to submit the timeliness issue to arbitration or to submit the grievance to the Assistant Secretary for a determination as to its arbitrability. I am of the opinion that you have not met the burden of establishing a reasonable basis that a 19(a)(1) or (6) violation occurred.

I am, therefore, dismissing your complaint in its entirety.

Pursuant to Section 203.8(c), you may appeal this section by filing a request for review with the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the Activity and any other party.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business January 28, 1976.

Sincerely,

Kenneth L. Evans

Kenneth L. Evans
Regional Administrator

1/ Report Number 49, ruling of the Assistant Secretary
2/ Long Beach Naval Shipyard A/SLMR No. 154

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-4-76

747

Ms. Joan Greene
2032 Cunningham Drive #201
Hampton, Virginia

Re: 4500 Air Base Wing
Langley Air Force Base
Case No. 22-6644(CA)

Dear Ms. Greene:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the subject case, which alleges violations of Section 19(a)(1) and (3) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that further proceedings in this matter are unwarranted as there is insufficient evidence to establish a reasonable basis for the Section 19(a)(1) and (3) allegations contained in the instant complaint.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

March 26, 1976

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

Ms. Joan Greene
2032 Cunningham Drive, #201
Hampton, Virginia 23666
(Cert. Mail No. 782045)

Re: 4500 Air Base Wing
Langley Air Force Base
Case No. 22-6644(CA)

Dear Ms. Greene:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted since no reasonable basis for the complaint has been established.

In your complaint you contend that the Respondent violated Section 19(a)(1) of the Order by negotiating the ground rules with a non-employee agent of the exclusive representative without the participation of bargaining unit employees acting as "employee representatives". You assert that the ground rules which provided that "the Employer's contract would be negotiated first and that no new article would be introduced by the union until completion of the Employer contract" interfered with, restrained and coerced the employee representatives from negotiating the employees' proposed contract.

The investigation has revealed that Mr. Daniel Hurd was appointed President Pro Tem of NAGE Local R4-106 in May 1975 by NAGE National President Kenneth T. Lyons and that Mr. Hurd was the Chief Negotiator for NAGE Local R4-106 at the negotiations of the Ground Rules on May 15, 1975, and at contract negotiations commencing on May 21, 1975, and terminating on June 3, 1975. Ms. Sallie Estelle, Ms. Beverly Heck and Ms. Queenie Wooden were members of the union's negotiation team but were not present for the negotiation of the Ground Rules or the signing of the Ground Rules agreement and did not sign the contract. Mr. Hurd signed the contract on behalf of NAGE, Local R4-106.

The thrust of your complaint is that the "employee representatives" were effectively prevented from negotiating provisions in the employees' proposed contract.

In my view there is nothing in the Order to support any concept of "employee representatives" rights as distinguished from the rights of the authorized agent of the exclusive representative. Mr. Hurd was the appointed President and authorized representative of NAGE, Local R4-106 during the contract negotiations in question. No evidence has been presented that the activity failed at any time to allow Mr. Hurd to negotiate as he saw fit on behalf of the employees.

Moreover, the obligation to meet and confer in good faith set forth in Section 11(a) of the Order is owed by an agency or activity to the labor organization which is the exclusive representative of the employees in the unit, and not to any individual.

The parties whom you represent, Ms. Sallie Estell and Ms. Beverly Heck, have filed this complaint as individuals on their own behalf. In my view, since an individual does not have any rights to negotiate, the complainants do not have any standing or cause of action with respect to the alleged violations of Section 11(a) of the Order.

Therefore, I find that you have failed to establish a reasonable basis that a 19(a)(1) violation has occurred.

You further allege that the activity rendered improper assistance to NAGE Local R4-106 in violation of Section 19(a)(3) of the Order by signing a contract with Mr. Hurd on June 3, 1975, the date of expiration of the Local's certification bar against challenge by other labor organizations for exclusive representative status. In support of this allegation you cite the fact that the activity, although in disagreement with the exclusive representative as to the meaning of one provision of the contract, nevertheless stated that it would sign the contract so as not to put the exclusive representative in the position of going to impasse prior to the expiration of a certification bar. In addition you cite the fact that, although the negotiations, consistent with the explicit provisions of the ground rules, had concerned only the non-professional unit represented by NAGE Local R4-106 at Langley Air Force Base, the activity and Mr. Hurd, without the knowledge of the complainants who had been participants on the Union's negotiating team, agreed to extend the coverage of the contract, making it a multi-unit agreement covering both the non-professional and professional units.

The investigation has revealed that in taking the above actions the activity did so with the concurrence of Mr. Hurd, who was Chief Negotiator and authorized agent of NAGE Local R4-106. I find that the activity's decision to engage in expeditious bargaining, even if partially motivated by a desire to accommodate the exclusive representative with respect to the expiration date of a certification bar, did not constitute improper assistance to the exclusive representative within the meaning of Section 19(a)(3) of the Order; therefore, no basis has been established for your allegation that

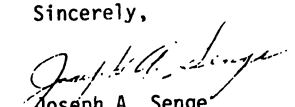
Section 19(a)(3) was violated.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. 20216, not later than close of business April 12, 1976.

Sincerely,



Joseph A. Senge
Acting Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

8-5-76

748

Mr. Paul Yampolsky
Vice-President, Local 2433
American Federation of Government
Employees, AFL-CIO
P.O. Box 3037
Lenox Branch
Inglewood, California 90304

Re: Defense Contract Administration
Services Region,
Los Angeles Defense Supply
Agency,
Los Angeles, California
Case No. 72-5707(CA)

Dear Mr. Yampolsky:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned matter.

In agreement with the Regional Administrator, I find that a reasonable basis for the instant complaint has not been established. Thus, in my view, there was insufficient evidence to establish a reasonable basis for the Complainant's allegations in this matter.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: 415-556-5915

REGIONAL OFFICE
March 19, 1976

Mr. Paul Yampolsky
Vice President
American Federation of
Government Employees
P. O. Box 3037
Lennox Branch
Inglewood, CA 90304

Re: DSA, DCSAR-LA -
AFGE, Local 2433 for
Paul Yampolsky
Case No. 72-5707

Dear Mr. Yampolsky:

The above captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. With respect to the alleged 19(a)(6) violation of the Order, I find that AFGE Local 2433 and Paul Yampolsky do not have the standing to file a complaint alleging a breach of agreement between the AFGE Council of Locals DCASR-LA and DCSAR, Los Angeles. The obligation to meet and confer is owed by the activity to the exclusive representative of employees, and not to an individual or Local which has designated the Council of Locals as its representative.

With respect to the alleged violations of 19(a)(1) and (4) by the activity to cause Mr. Yampolsky a loss of annual leave, no evidence was submitted to sustain these charges.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216, not later than the close of business on April 5, 197

Sincerely,

Gordon M. Byrholdt
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

8-5-76

749

Mr. John Helm
Staff Attorney, NFFE
1016 16th St., N.W.
Washington, D.C. 20036

Re: Navy Commissary Store Complex
San Diego, California
Case No. 72-5602(CA)

Dear Mr. Helm:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that there is insufficient evidence to establish a reasonable basis for the subject complaint and, consequently, further proceedings in this matter are unwarranted. In this regard, it should be noted that while the Regional Administrator did not deal directly with the Section 19(a)(4) allegation in his dismissal action, insufficient evidence was submitted which would support a reasonable basis for a finding of improper discipline or discrimination against an employee because he filed a complaint or gave testimony under the Order. Thus, the Complainant has not met its burden of proof in this regard.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

February 18, 1976

Mr. Frank J. Carpenter, President
National Federation of Federal Employees, LU 63
2762 Murray Ridge Road
San Diego, CA 92123

Re: Case No. 72-5602

Dear Mr. Carpenter:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as this case involves contract interpretation. See Rule No. 49. In this regard, it is noted that Complainant appears to contend that its representative has the right under the agreement to confer with an employee in any Commissary store at any time during duty hours while remaining in duty status.

Contrarily, Respondent appears to contend that the agreement does not grant the representation rights claimed by your representative and that your representative must receive permission in advance to be absent from his work area during duty hours.

In these circumstances, and since there is no evidence that the June 13, 1975, reprimand resulted from other than these differing interpretations of the agreement, it is concluded that there is no reasonable basis to issue a notice of hearing with respect to the allegations herein.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D. C. 20210, not later than the close of business on March 4, 1976.

Sincerely,

Gordon M. Byrnholdt
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

8-5-76

750

Colonel John P. Byrne
Commanding Officer
Rocky Mountain Arsenal
Denver, Colorado 80240

Re: Rocky Mountain Arsenal
Department of the Army
Denver, Colorado
Case No. 61-2587(GA)

Dear Colonel Byrne:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability or Arbitrability in the above-named case.

In agreement with the Acting Regional Administrator, I find that the grievance herein is subject to the negotiated grievance and arbitration procedures. Thus, in my view, the evidence establishes that the payment of environmental pay differentials for certain local work situations is a prior benefit which was mutually acceptable to the parties within the meaning of Article XXXV, Section 4 of their negotiated agreement. Consequently, a change with regard to this previously existing practice would require mutual agreement. Therefore, the grievance herein, which involves an alleged unilateral change in this past practice, is a dispute over the interpretation and application of Article XXXV, Section 4. As Article XXXI of the agreement provides a procedure for the consideration of such grievances, I find the grievance herein to be subject to this procedure.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability or Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Regional Administrator, Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this

decision, as to what steps have been taken to comply herewith. The Regional Administrator's address is Room 2200, Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
KANSAS CITY REGION

DEPARTMENT OF THE ARMY,
ROCKY MOUNTAIN ARSENAL (RMA),
DENVER, COLORADO
Activity/Party to Agreement
and
AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES LOCAL 2197
AFL-CIO 1/
Applicant

Case No. 61-2587(GA)

REPORT AND FINDINGS ON ARBITRABILITY

Upon the filing of an Application for Decision on Arbitrability duly filed under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of the matter has been conducted by the Denver Area Director. 2/

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation I find and conclude as follows:

The application was filed in the office of the Denver Area Director on February 21, 1975, and arises from a grievance filed by the Union on November 18, 1974. 3/ Local 2197, American Federation of Government Employees, AFL-CIO, is the recognized exclusive representative of a unit of certain employees of the Rocky Mountain Arsenal, Denver, Colorado. The parties had a negotiated agreement signed on January 5, 1971. A Memorandum of Understanding concerning coverage of payable categories (re: environmental hazard pay) was signed by the parties on March 12, 1974. On February 1, 1972, the parties signed another Memorandum of Understanding, concerning the same issue as was covered by the March 12, 1971 Memorandum. This second Memorandum superseded in its entirety the earlier document and remained in effect during the life of the January 5, 1971, Basic Agreement. Another collective bargaining agreement was entered into on March 7, 1974, and is currently in effect.

The grievance involves the payment of Environmental Differential Pay (EDP). EDP is a premium pay rate paid Federal employees as provided for in the Federal Personnel Manual, Supplement 532-1, Appendix J. Environmental differential is authorized therein for a category of situations involving exposure to a hazard, a physical hardship, or working conditions of an unusually severe nature. Environmental differentials are stated in percentage amounts (rates) and are authorized for the covered categories.

In the grievance it is alleged that the Activity on August 13 and November 12 1974 unilaterally reduced certain EDP rates in violation of Article XXXV, Section 4 of the parties negotiated agreement which reads as follows: 4/

> It is further agreed and understood that any prior benefits and practices and affecting personnel practices and working conditions of members of the Unit which have been mutually acceptable to the parties and which is not specifically covered by this AGREEMENT shall not be changed unless mutually agreed to by the parties.

By letter of December 12, 1974, the Activity informed the Union of its opinion that EDP is neither grievable nor arbitrable under the current agreement. The parties met on January 21 and 23, 1975, and further discussed the issue raised in the grievance. The Activity in compliance with Article XXXI, Section 5 of the parties' agreement provided by letter of January 24, 1975, its policy decision that the matter raised is not subject to the negotiated grievance procedure. 5/ The Application is filed timely with respect to that decision.

1/ Hereinafter also referred to as the Union.

2/ The Application did not indicate whether the issue was one of grievability or arbitrability. By letter of March 19, 1975, however, the Applicant stated that the question referred to the Assistant Secretary was one of arbitrability.

3/ The grievance was filed by the President of AFGE Local 2197 directly with the Commanding Officer of the Activity as provided for in Article XXXI, Grievance & Arbitration Procedures, Section 3(e) which reads in pertinent part: "UNION grievances over the interpretation or application of the AGREEMENT, which cannot be settled informally through discussion between the parties at the appropriate levels, may be submitted in writing by the UNION President, or his designee, directly to the Commander.... If the grievance is not resolved at this point, the UNION may refer the matter to arbitration...."

4/ Both in the grievance and in the Application, the Union argues that the Activity has an obligation to negotiate on EDP even absent such a provision in the parties' agreement. In my view, an application for decision on grievability or arbitrability is not a forum in which a question of negotiability may be raised before the Assistant Secretary. Therefore, I make no finding in this regard.

5/ Article XXXI, Section 5, Questions Over Interpretation and Application of Agreement, provides in pertinent part: "Questions that cannot be answered by the parties as to whether a grievance is on a matter subject to the grievance procedure, or is subject to arbitration under the Agreement, may be originated by UNION or EMPLOYER....The Commander (RMA) will furnish a written interpretation or policy decision on the matter in question. If the UNION does not accept the interpretation or decision, it may refer the matter to the Assistant Secretary of Labor for Labor-Management Relations for decision."

The position of the Applicant is provided in the Application (and attachments thereto) and in its rebuttal of March 19, 1975, to the Activity's response. 6/ Therein it asserts that the rates (classifications) of EDP, established before the current agreement became effective constitute a prior benefit or practice affecting personnel practices or working conditions, mutually acceptable to the parties and not specifically covered by the present agreement. It argues further that such rates fall within the purview of Article XXXV, Section 4, of the current agreement (cited above) and therefore may not be changed unless mutually agreed to by the parties. It is noted in this regard that the Applicant does not contend that the EDP rates are totally discretionary; to the contrary, it recognizes the limits, as set forth in the Federal Personnel Manual. The Union does contend, however, that any reduction in EDP rates must be commensurate with a reduction of the environmental hazard involved and further, that there must be mutual agreement between the parties in this regard prior to the changing of any such rates.

The position of the Activity essentially is that in order for the provisions of Article XXXV, Section 4, to be applicable, there must be evidence of mutuality of acceptance of a past practice. It is asserted that the Applicant has not furnished any such evidence of mutual acceptance with respect to the previously existing EDP rates. I am not persuaded by the argument of the Activity in this regard. By the very act of asserting the applicability of the contested Section, the Union has affirmed its acceptance of the past practice, i.e., the previously existing EDP rates. Of greater significance, however, (and as noted by the Activity) is the fact that during the negotiations which led to the current agreement the Union did not raise as a bargainable issue EDP rates. It is undisputed that the Union was aware of the existance of such rates. In my view, therefore, the Union, by its failure to raise this issue during negotiations, provided tacit agreement of the EDP rates as established previously by the Activity. Moreover, it is neither shown nor alleged that the Union ever disagreed with the previously established rates. I am therefore satisfied that the EDP rates as established (prior to the subject changes) constitute a prior benefit mutually acceptable to the parties.

The Activity argues further that the only mutually agreed to past practice with respect to EDP is that which is established in the March 1971 and February 1972 Memoranda of Understanding. Therein, the Activity's obligation is limited to consultation, i.e., considering the Union's proposals and/or viewpoint prior to making any final determination. Also provided for is the Union's right to appeal certain of the Activity's decisions to the Department of the Army.

6/ On January 19, 1976, the newly-elected President of AFGE Local 2197 submitted documentation believed to be relevant. A review of the material submitted reveals that certain items had been furnished previously and have been considered in reaching the determination herein. The documents remaining (i.e., those not submitted previously) are, in my view, not relevant to the issue raised and have therefore not been considered.

The investigation reveals that the Memoranda of Understanding concern, however, local work situations warranting EDP coverage under payable categories (as set forth in the Federal Personnel Manual); the Memoranda do not treat, either implicitly or explicitly, the question involved herein, i.e., environmental differential pay classifications (rates). 7/ I conclude therefore that the Memoranda do not evidence a past practice with regard to EDP rates as argued by the Activity; further, neither the Memoranda nor the negotiated agreement specifically cover such rates.

Having considered carefully the application, the position of the parties and all that which is set forth above, it is my view that the previously existing environmental differential pay rates constitute a prior benefit affecting unit members concerning working conditions and/or personnel practices which have been mutually acceptable to the parties. I therefore conclude that the matter raised in the grievance is one covered under Article XXXV, Section 4, of the negotiated agreement.

Accordingly, I find that the grievance is on a matter subject to the grievance procedure contained in the parties' existing agreement. Further, the parties' agreement provides specifically that if a Union grievance is not resolved between the Union President, or his designee and the Commander, or his designee, the Union may refer the matter to arbitration (Footnote 3, supra). 8/ I find therefore that the grievance is on a matter subject to Article XXXI, Section 4, Arbitration, of the current agreement; further, should the parties be unable to resolve the grievance, the matter may be referred to arbitration as provided for therein.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as on the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business March 25, 1976.

7/ Article XXVI, Hazard Pay, which the parties agree is neither relevant nor material to the grievance involved herein, involves solely, as do the referenced Memoranda, coverage of local work situations under existing categories and the establishment of additional categories for EDP (as opposed to EDP rates).

8/ On December 17, 1974, the Applicant executed a Request for Arbitration Panel to the Federal Mediation and Conciliation Service (FMCS). This "request" was not signed by the Activity and apparently was not submitted to the FMCS.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review is not filed, the parties shall notify the Regional Administrator for Labor-Management Services, U. S. Department of Labor, in writing, at the address shown below, within 20 days from the date of this decision as to what steps have been taken to comply herewith.

Dated at Kansas City, Missouri, this 10th day of March 1976.

THOMAS R. STOVER
Acting Regional Administrator
U. S. Department of Labor
Labor-Management Services Administration
2200 Federal Office Building
911 Walnut Street
Kansas City, Missouri 64106

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

8-6-76

751

Mr. William J. Mitchell
President, Local 1332
National Federation of
Federal Employees
6104 Edsall Road
Alexandria, Virginia 22304

Re: Department of Army
Headquarters, U.S. Army Materiel
Command
Case No. 22-6445(CA)

Dear Mr. Mitchell:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Sections 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

December 24, 1975

Mr. William J. Mitchell
President
Local 1332, National Federation of
Federal Employees
6104 Edsall Road
Alexandria, Va. 22304

Re: Department of the Army
Hqs., Army Materiel Command
Case No. 22-6445(CA)

Dear Mr. Mitchell:

In a letter received by you from this office dated December 19, 1975, page 2, paragraph 3 should read as follows:

> You have presented no evidence that the July 30, 1975 briefing for your union or at the later briefing for employees any personnel actions were announced. In fact, the evidence submitted supports a conclusion that no decision had been made as to the specific personnel actions which would result from the reorganization. In the absence of any evidence of such a decision at the time or the effectuation of any actions at any time closely following the announcement of the reorganization, you have not shown that the Respondent failed to afford you reasonable notification and ample opportunity to negotiate over impact and implementation insofar as was required by the order. Nor have you presented any evidence that Respondent refused to meet and confer at any time after the July 30, 1975 announcement. To the contrary, the evidence submitted shows that the Respondent did meet and confer with you on August 26, 1975 and that agreement was reached on some of the proposals you had submitted on August 5, 1975.

Sincerely,

Eugene M. Levine
Acting Regional Administrator

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

December 19, 1975

Mr. William J. Mitchell
President
Local 1332, National Federation of
Federal Employees
6104 Edsall Road
Alexandria, Virginia 22304
(Cert. Mail No. 701589)

Re: Department of the Army
Hqs., Army Materiel Command
Case No. 22-6445(CA)

Dear Mr. Mitchell:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted.

You allege that Headquarters, Army Materiel Command, violated Sections 19(a)(1) and (6) of the Executive Order by failing to negotiate with you during the formulation of a reorganization. You further allege that the Respondent violated those sections of the Order by including AFGE, Local 2 in the same briefing session at which you were informed of the pending reorganization.

The investigation revealed that on or about July 30, 1975, you were informed by the Respondent of its plans to reorganize the Headquarters, Army Materiel Command. Briefings were held, by your account, later on July 30, 1975, for the general workforce. (Evidence submitted indicates that the briefing for employees actually occurred on July 31, 1975.) On August 3, 1975, you filed an unfair labor practice charge regarding the Activity's alleged failure to negotiate with you regarding the formulation of the reorganization. Also you alleged that Respondent bypassed you as exclusive representative by announcing the planned reorganization to employees prior to negotiating with you. On August 5, 1975, your union submitted a list of several demands related to impact and implementation to the Activity. On August 15, 1975, the Respondent replied to the charge and offered to negotiate your demands of August 5, 1975. On August 26, 1975, the parties met and discussed your demands reaching agreement on some of them. It appears from the evidence submitted that further meetings were planned to continue the discussions. On October 14, 1975, you filed a complaint alleging that the Activity had violated 19(a)(1) and (6) of the Order by failing to confer with you during the formulation stage of the reorganization and by derogating your status as

exclusive representative by including AFGE Local 2 at the briefing session you attended on July 30, 1975.

With respect to the latter allegation--the inclusion of AFGE Local 2 at the briefing session--this particular allegation was not contained in the charge and thus cannot be considered in the complaint. Also in the complaint you make reference to briefings given employees on August 18 and 21, and October 3, 1975, which undermined the union. These alleged violations occurred after the charge had been filed; therefore, no precomplaint charge has been filed on the alleged incidents.

As to the remaining allegation, i.e., that the Respondent failed to negotiate with your union during the formulation of the reorganization plan, precedent decision of the Assistant Secretary has held that the decision to reorganize is excluded from the obligation to bargain by virtue of Section 11(b) and 12(b) of the Executive Order. However, an exclusive representative may request, and should be afforded the opportunity to negotiate over impact and implementation procedures. 1/

You have presented no evidence that the July 30, 1975 briefing for your union or at the later briefing for employees any personnel actions were announced. In fact, the evidence submitted supports a conclusion that no decision had been made as to the specific personnel actions which would result from the reorganization. In the absence of any evidence of such a decision at the time or the effectuation of any actions at any time closely following the announcement of the reorganization, you have not shown that the Respondent failed to afford you reasonable notification and ample opportunity to negotiate over impact and implementation insofar as was required by the Order. Nor have you presented any evidence that Respondent did meet and confer with you on August 26, 1975 and that agreement was reached on some of the proposals you had submitted on August 5, 1975.

In view of all of the foregoing, I am dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany this request for review.

1/ Federal Railroad Administration, A/SLMR No. 418.

Such request must contain a complete statement setting forthe facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business January 5, 1976.

Sincerely,

Eugene M. Levine
Acting Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

8-6-76

752

Mr. Raymond B. Swaim
President, Local 1858
American Federation of Government
Employees, AFL-CIO
Building 3648
Redstone Arsenal, Alabama 35809

Re: United States Army Missile Command
Redstone Arsenal, Alabama
Case No. 40-6799(GA)

Dear Mr. Swaim:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Grievability or Arbitrability in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the instant Application should be dismissed. Thus, Report On Ruling No. 56 (copy attached) states that an application may be filed within sixty days of a final written rejection, after arbitration is invoked. The evidence discloses that the grievance involved herein was neither processed through all of the steps of the grievance procedure, nor was arbitration invoked. Consequently, the Application is not properly before the Assistant Secretary.

Accordingly, your request for review seeking reversal of the Regional Administrator's Report and Findings on Grievability or Arbitrability is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

April 22, 1976

Mr. Raymond B. Swaim, President
American Federation of Government
Employees - Local 1858, AFL-CIO
Building 3648
Redstone Arsenal, Alabama 35809

Re: United States Army Missile Command
Redstone Arsenal, Alabama
Case No. 40-6799(GA)

Dear Mr. Swaim:

The above-captioned case, initiated by the filing of an Application for Decision on Grievability or Arbitrability under Section 205 of the Regulations of the Assistant Secretary has been investigated and considered carefully. It does not appear that further proceedings are warranted.

Investigation discloses that the Applicant and the Activity are parties to a labor-management agreement effective March 6, 1975, for a three-year period. The agreement in Article V contains a grievance and arbitration procedure. Section 3 of that Article provides for a three-step grievance procedure leading to arbitration, which is set out in Section 5.

On October 2, 1975, Herschel D. Cramer, Equipment Specialist, GS-12, filed a grievance alleging violation of Article XXXVIII, which is entitled Fitness For Duty Physicals. 1/ That Article states:

> Direction that requires an employee to submit to a fitness for duty physical shall be in accordance with and meet all requirements to appropriate regulations including FPM 339.

Cramer contends that he was requested to submit to a Fitness For Duty Physical after failing an overseas physical while other employees who failed were transferred into non-rotational positions. He contends that instead of transferring him to a non-rotational position, he will be required to take a medical retirement.

The first-step meeting was held on October 3, 1975, and the second-step meeting on October 16, 1975. During the second-step meeting the Activity raised the issue of grievability of Cramer's grievance and the meeting was adjourned to October 22 in order that a representative from the Labor Relations Office be present. On October 29, 1975, the grievance was rejected as non-grievable.

1/ The Application in Item 4a shows the grievance was filed on October 3, 1975. The grievance is dated October 2, 1975.

The Activity in its rejection cited various provisions of the contract including Article V, Section 2c which states:

> Grievances involving interpretation of published Department of the Army policies or regulations, provisions of law or regulations of appropriate authorities outside of Department of the Army shall not be subject to this negotiated grievance procedure regardless of whether such laws, policies or regulations are quoted, paraphrased, cited or otherwise incorporated or referenced in this AGREEMENT.

According to the Activity, Cramer's grievance "extends beyond the direction requirement negotiated in Article XXXVIII".

The grievance was not processed through Step 3 of the grievance procedure nor was arbitration invoked under Section 5 of Article V.

It is the Applicant's position that the Activity's failure to properly apply or follow FPM 339 is grievable. You state that even though Article XXXVIII makes reference to the FPM, the Article was negotiated in good faith and an alleged violation of the article can be brought under the grievance procedure.

Section 205.2(b) 2/ of the Regulations of the Assistant Secretary provides in part as follows:

> . . . an application for a decision by the Assistant Secretary as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement . . . must be filed within sixty (60) days after service on the applicant of a written rejection of its grievance on the grounds that the matter is not subject to the grievance procedure in the existing agreement . . .

Article V, as previously stated, contains the arbitration procedure. Applicant has neither pursued all steps of the grievance procedure nor invoked arbitration. The Assistant Secretary in Report on Ruling No. 56, a copy of which is enclosed, stated in part:

> For the purpose of computing the sixty (60) day filing period of an Application for Decision on Grievability or Arbitrability under Section 205.2(a) of the Assistant Secretary's Regulations, there must be a <u>final written rejection after the arbitration clause is invoked</u>. (Emphasis added)

2/ Section 205.2(b) was formerly Section 205.2(a).

Inasmuch as the Applicant failed to invoke arbitration, the Activity did not provide the Applicant with its <u>final written rejection</u> of the grievance as required by Report No. 56. Therefore, no determination can be made as to whether the grievance is on a matter subject to the grievance procedure in an existing agreement.

The Application seeks a determination on whether the Activity may violate Article V, Section 3a(3) by failing to have present at the second-step grievance discussion an official below the Chief of Staff who has the authority to grant or deny the grievant relief sought. I shall not treat this issue as before me inasmuch as it is not a grievance, but is being raised in the context of the Cramer grievance.

I am, therefore, dismissing the Application.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request for review must be served on the undersigned as well as the other parties.

A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business May 7, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services

Enclosure

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-9-76

753

Mr. John Bufe
National Field Representative
National Treasury Employees Union
and NTEU, Chapter No. 098
1730 K Street, N. W., Suite 1101
Washington, D. C. 20006

Re: U. S. Department of the Treasury
Internal Revenue Service
Memphis Service Center
Memphis, Tennessee
Case No. 41-4656(CA)

Dear Mr. Bufe:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted as, in my view, the meeting involved herein was not a formal discussion within the meaning of Section 10(e) of the Order. Thus, the evidence establishes that the sole purpose for the subject meeting, called at the request of affected employees, was merely to explain existing office policy with respect to answering the telephone when the unit manager and the clerk were away from the work area.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

April 2, 1976

Mr. John Bufe
National Field Representative
National Treasury Employees Union
and NTEU Chapter 28
Suite 1101 - 1730 K Street, N.W.
Washington, D. C. 20006

Re: U. S. Department of the Treasury
Internal Revenue Service
Memphis Service Center
Memphis, Tennessee
Case No. 41-4656(CA)

Dear Mr. Bufe:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. The complaint alleges that Respondent violated Section 19(a)(1) and (6) by holding a formal discussion within the meaning of Section 10(e) of the Order without notification to Complainant.

Investigation discloses that a meeting was convened on July 18, 1975, by the Section Manager of Unit 66 after four tax examiners of that Unit requested that a meeting be conducted for the purpose of establishing a procedure for answering the telephone in that Unit. The tax examiners expressed their concern and displeasure over the fact that Unit 66 was without the services of a clerk who could answer the telephone. The clerks in other Units declined to answer the telephone.

It is undisputed that Respondent's Section Manager did not notify the exclusive representative of the meeting nor did he comply with the requests of the tax examiners to call the union steward into the meeting.

The purpose of the meeting was not to make a unilateral change in personnel policies, practices or working conditions. Nor was the purpose of the meeting to discuss a pending grievance. The fundamental purpose of the meeting was to discuss a work related problem and how it may be resolved. Moreover, the matter for which the meeting was called involved a minimal percentage of employees in the exclusive unit; general working conditions of unit employees were not involved or affected.

Under these circumstances, in the absence of a pending grievance and in the absence of evidence that Respondent intended to unilaterally institute a change in working conditions, I find that the July 18, 1975, meeting was not a formal discussion within the meaning of Section 10(e). Accordingly, Respondent was not required to afford the exclusive representative the opportunity to be present at the meeting nor was Respondent required to comply with the employees' request to call in the union steward. I find no reasonable basis for a 19(a)(1) and (6) complaint.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business April 19, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

8-10-76

754

Mr. Otto J. Thomas
President
Overseas Federation of Teachers
APO, New York 09457

Re: U.S. Dependent's Education Schools
European Area (USDESEA)
Darmstadt Career Center
Case No. 22-6629(RO)

Dear Mr. Thomas:

I have considered carefully your request for review seeking reversal of the Regional Administrator's decision denying your request for intervention in the subject case.

In view of the unique circumstances involved herein, I have decided, pursuant to Section 206.9 of the Assistant Secretary's Regulations, to waive strict application of the time limits in this case and allow the intervention in this matter of the Overseas Federation of Teachers.

Accordingly, the request for review is granted, and the matter is remanded to the Regional Administrator, who is directed to treat your intervention as timely.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

April 12, 1976

Mr. Otto J. Thomas, President
Overseas Federation of Teachers
APO New York 09457
(Cert. Mail No. 452146)

Re: U.S. Dependents Education Schools
European Area (USDESEA)
Darmstadt Career Center
Case No. 22-6629(RO)

Dear Mr. Thomas:

This is to advise you that your request to intervene in the above-captioned case was not filed timely as required by Section 202.5(c) of the Regulations of the Assistant Secretary.

Investigation of your request discloses that it was dated February 23, 1976, postmarked February 25, 1976, and received by the Labor-Management Services Administration's Washington Area Office on March 1, 1976. The Notice to Employees was posted from February 12 through 23, 1976.

I am, therefore, denying your request for intervention.

Pursuant to Section 202.6(d) of the Assistant Secretary's Regulations, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the Activity and Petitioner. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business April 27, 1976.

Sincerely,

Kenneth L. Evans

Kenneth L. Evans
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-10-76

755

Mr. Henry H. Robinson
Assistant Regional Counsel
National Treasury Employees Union
8301 Balcones Drive, Suite 315
Austin, Texas 78759

Re: Internal Revenue Service
Southwest Region
Dallas, Texas
Case No. 63-6195(CA)

Dear Mr. Robinson:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of your complaint, which alleges a violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that a reasonable basis has been established with respect to the allegations in the instant complaint.

Accordingly, the Acting Regional Administrator is directed to reinstate the subject complaint and, absent settlement, to issue a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

March 18, 1976

In reply refer to: 63-6195(CA)
Treasury/IRS, Southwest Region/
NTEU Chapter 91

Mr. Vincent L. Connery
National President
National Treasury Employees Union
1730 K Street N. W.
Washington, D. C. 20006

Certified Mail #201989

Dear Mr. Connery:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant.

In this regard you have offered no evidence that the respondent has failed or refused to meet and confer in good faith concerning negotiable items.

Section 11 (b) of the Order delineates certain items to which the obligation to meet and confer does not extend. Among these is "tour of duty". I am persuaded that included in the definition of "Tour of Duty" is the starting time of a regular work day-- i.e. "flexitime" as that term has been employed by the parties to this complaint. While scheduling of work time has apparently been the subject of bargaining proposals, the parties have not availed themselves of impasse procedures in this regard. The single result of this bargaining history appears at Article 20 of the current Collective Bargaining Agreement. The language of this article does not reflect concession by the employer of the negotiability of changes in work schedules beyond notice of impending change prior to implementation of management decisions.

Management has in fact considered union proposals, and has actively solicited from the union written proposals with respect to impact on unit employees of implementation of the proposed change. Such proposals are nowhere in evidence, therefore, I find that "flexitime" or the requiring of uniformity in the hours of work is not a negotiable issue.

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor Management Relations, 14th & Constitution, N.W., Washington, D. C. 20216, not later than close of businesss April 8, 1976.

Sincerely,

Gordon E. Brewer

Cullen P. Keough
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-10-76

Mr. Alphonso Garcia
National Representative
American Federation of Government Employees, AFL-CIO
5911 Dwyer Road No. 28
New Orleans, Louisiana 70126

756

Re: Veterans Administration Hospital
New Orleans, Louisiana
Case No. 64-3089(CA)

Dear Mr. Garcia:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the instant complaint alleging violations of Section 19(a)(1), (2) and (3) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in this matter are unwarranted. Thus, I agree that the Respondent properly rejected the Complainant's request to conduct a 30-day organizing campaign at the Respondent's facility, although previously granting another labor organization's request, because at the time of the Complainant's request the other labor organization involved had already filed a representation petition, and the Complainant was not yet Intervenor therein. Accordingly, the two labor organizations were not in equivalent status at that time. Although the Complainant intervened several days after its request was made, it did not renew such request, and there is no showing that it was treated disparately or in a discriminatory manner thereafter.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

April 23, 1976

In reply refer to: 64-3089(CA)
Veterans Administration Hospital,
New Orleans, Louisiana, and
American Federation of Government
Employees, AFL-CIO, Local 3513, and
National Federation of Federal
Employees, Local 1904

Mr. Alfonso Garcia, National Representative
American Federation of Government Employees
5911 Dwyer Road, Apt. 28
New Orleans, Louisiana 70126

Dear Mr. Garcia:

The above captioned case alleging violations of Section 19(a)(1),(2) and (3) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

In this regard consideration was given only to your allegation that on or about December 15, 1975 the Activity authorized a short restricted membership drive rather than the 30 days you requested. By letter dated March 6, 1976, you advised the New Orleans Area Office that the additional alleged violations listed in your charge and complaint occurred in the summer of 1974 rather than in October 1975. Therefore, the additional alleged violations were not investigated because they were not timely filed as required by Section 203.2(a)(2) of the Regulations of the Assistant Secretary in that the charge was not filed within six months of the occurrence of the alleged Unfair Labor Practice.

Investigation in this matter reveals that on December 8, 1975 four days prior to your December 12, 1975 request for a membership drive, Local 1904, National Federation of Federal Employees (NFFE), had filed an RO petition for the professional employees which you were seeking to organize. Under these circumstances as a non-intervenor, you did not have equal status with the petitioner, NFFE, and the Activity was not obligated to assist you by granting your request for the 30 day membership drive. See U. S. Department of Interior, Pacific Coast Region, Geological Survey Center, Menlo Park, California A/SLMR 143 and Defense Supply Agency Defense Contract Administrative Service Region, SF, Burlingame, California A/SLMR 247.

You therefore have failed to sustain a burden of proof as required by Section 203.6(e) of the Assistant Secretary's Regulations.

Based upon the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A Statement of Service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, 200 Constitution Avenue, N. W., Washington, D. C. 20216 not later than the close of business May 10, 1976.

Sincerely,

Cullen P. Keough
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-10-76 757

Mr. John P. Helm
Staff Attorney
National Federation of Federal
Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: U.S. Army Engineer District
Vicksburg, Mississippi
Case No. 41-4550(RO)

Dear Mr. Helm:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of your objections to the election in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the objections on this matter should be dismissed. Cf. Army Materiel Command, Army Tank Automotive Command, A/SLMR No. 56

Accordingly, and noting that allegations raised for the first time in your request for review (i.e., that 28 employees had their ballots returned as undeliverable), will not be considered by the Assistant Secretary (see Report On A Ruling No. 46, copy attached), your request for review seeking reversal of the Regional Administrator's dismissal of your objections, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U. S. ARMY ENGINEER DISTRICT, VICKSBURG VICKSBURG, MISSISSIPPI Activity LOCAL 3310, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO Petitioner NATIONAL FEDERATION OF FEDERAL EMPLOYEES COUNCIL OF LOCALS 135 AND 825 Intervenor	CASE NO. 41-4550(RO)

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on January 9, 1976, an election by secret ballot was conducted under the supervision of the Area Administrator, Nashville, Tennessee, on January 27, 1976. The election was inconclusive. The Tally of Ballots showed that 160 ballots were cast for National Federation of Federal Employees Council of Locals 135 and 825 (NFFE); 174 ballots were cast for Local 3310, American Federation of Government Employees (AFGE) and 72 were cast against exclusive recognition. The five challenged ballots were not determinative.

In accordance with Section 202.21 of the Regulations of the Assistant Secretary, a runoff election by secret ballot was conducted under the supervision of the Area Administrator, Nashville, Tennessee, on March 10, 1975. The results of the runoff election, as set forth in the Tally of Ballots, are as follows:

1.	Approximate number of eligible voters	1,040
2.	Void Ballots	20
3.	Votes Cast for AFGE	216
4.	Votes cast for NFFE	184
5.	Valid votes counted (sum of 3 and 4)	400
6.	Challenged Ballots	4
7.	Valid votes counted plus challenged ballots	404

Challenged ballots were not sufficient in number to affect the results of the election.

Timely objections to the procedural conduct of the election and to conduct improperly affecting the results of the election were filed on March 15, 1976, by NFFE. 1/

In accordance with Section 202.20 of the Regulations of the Assistant Secretary the Area Administrator investigated the objections. Set forth below are the essential facts and positions of the parties and my findings with respect to each of the objections.

Objection No. 1 - I shall treat the following as the first objection:

> . . . the NFFE objects to the fact the Department of Labor failed to send mail ballots to several locations including Monroe, Louisiana, denying many eligible employees the opportunity to vote.

1/ Attached as Appendix A.

The procedures in the original election as well as the runoff election provided for both mail and manual balloting. Employees with duty station in Vicksburg, Mississippi, except certain guards and night watchmen voted manually. Employees with duty stations in the various field locations throughout the District (Louisiana, Mississippi, and Arkansas), the Vicksburg guards and watchmen, and employees temporarily assigned away from Vicksburg voted by mail. Ballots were mailed in the presence of authorized observers by the Activity on February 25, 1976, to employees' home addresses of record. Notices of Election advising of the mail and manual procedures were posted. The mail ballot notice included procedures for requesting a ballot by March 2 if the eligible voter had not received a ballot by that date. 2/

NFFE claims that a large number of eligible voters were disenfranchised. It alleges that three employees at DeGray Lake, Kenneth Herron, Charles Burroughs, and Schurman Harman and Don Kemp at Blakely Dam did not receive mail ballots. No statements from these employees were submitted. NFFE submitted signed statements from Louis Richmond, Arthur Ainsworth and Gale Fryar who stated that they did not receive mail ballots. Additionally, NFFE submitted signed statements from Wilfred LeJeune, Dale Torrey and Raymond Barnett who stated they received mail ballots on March 8 and returned them, but that they do not know if they were received in sufficient time to be counted. NFFE further alleges that twenty-four employees working aboard the MV LIPSCOMB were denied the opportunity to vote when the LIPSCOMB failed to dock for a sufficient period of time to permit the employees aboard to cast their ballots. NFFE submitted a letter from the Activity showing the schedule of the LIPSCOMB on the day of the election and a list of employees aboard the vessel.

AFGE states that the mail ballots were sent out on February 25, 1976, in the presence of the observers of the Activity and both unions. It states that no objections were raised at that time concerning the mail ballots. AFGE made no statement concerning the employees on the LIPSCOMB.

The Activity advises that Notices of Election were posted on all official bulletin boards not later than February 18. With respect to employees Richmond, Ainsworth and Fryar, the Activity advised that ballots were mailed to their addresses on record. As to LeJeune, Torrey and Barnett the Activity advises that on March 4, 1976, the Administrative Assistant in these employees' organizations notified the Personnel Office that the employees had not received ballots. According to the Activity, another mail ballot package was delivered to each of the three employee's field location on March 5 and delivery was made to the employees on March 8, 1976. The Activity advised that the envelope containing Harman's ballot was returned undelivered.

The Activity advises that Notices of Election were posted on the LIPSCOMB and that there were 16 eligible employees on board.

A review of the voter list reveals that the ballots of LeJeune, Torrey and Barnett who were uncertain if their ballots were mailed in time, were counted. Thus there is no issue with respect to these employees' ballots.

The objection contains no allegation nor is there any evidence that Notices of Election were not posted timely at Monroe, Louisiana, or at any other location. The Notice of Election contained specific instructions as to the steps the employee should take if he did not receive a ballot by March 2. The employee was instructed to notify the Labor Relations Specialist in the Personnel Office. The address of the Personnel Office was included as well as the telephone number. There is no evidence that either Herron, Burroughs, Harman, Kemp or Richmond were improperly notified of the provisions for requesting a ballot if one was not received, nor is there evidence that a request was made by any of these employees which was not honored.

2/ The Notice of Election states in part:

> In order to be counted a ballot must be received at the designated address on or before 4:00 p.m. on March 10, 1976. Any employee who believes himself to be eligible and who has not received a ballot by March 2, 1976, should notify the Labor-Management Relations Specialist, Personnel Office, U. S. Army Engineer District, Vicksburg, P. O. Box 60, Vicksburg, MS 39180; telephone no. 601-636-1311, ext. 430 by March 2, 1976. The activity, in the presence of the authorized observers, will remail ballots on March 3, 1976, to all employees who have so notified the Labor-Management Relations Specialist.

In the absence of evidence that employees Herron, Burroughs, Harman, Kemp or Richmond were improperly denied the opportunity to cast a mail ballot, I find no merit to this portion of Objection No. 1. 3/

With respect to Fryar and Ainsworth, the Activity advises that the Administrative Assistant in their organizations called the Personnel Office on March 4, 1976, to report that they had not received the mail ballots. The Activity checked to determine if the envelopes mailed to these employees had been returned by the Postal Service as undelivered. According to the Activity, a new mail ballot package was then sent to Fryar. According to the Activity the envelope to Ainsworth had not been returned by the Postal Service as undelivered. Thus, according to the Activity, Ainsworth was not provided with a new mail ballot package. Neither Ainsworth nor Fryar appear on the voter list as having cast ballots.

There is no evidence that the envelope mailed to Fryar on February 25 did not contain the address of record for him. Nor is there any evidence that the second ballot mailed to Fryar was addressed to other than his home address or that he provided an address which was not properly utilized by the Activity when it remailed his ballot. In the absence of any evidence that the ballot to Fryar was not addressed to his address of record or to an address which was provided for remailing, there is no basis for finding that an improper mail ballot procedure denied Fryar an opportunity to cast a ballot.

The Notice of Election instructs the employee to request a ballot by March 2 if a ballot has not been received by that date. It would be difficult to make a timely request for a ballot if the employee realized he had not received a ballot at his home address on March 2. Investigation reveals that requests were made for ballots on March 4, after the cut-off date of March 2. With the exception of Ainsworth, all requests for ballots were honored and employees were sent mail ballot packages a second time. There is no evidence that the March 2 cut-off date prevented employees who did not receive ballots from making requests. Nor is there any evidence that any employee other than Ainsworth made a request which was not honored. AFGE won the election by 32 votes. Therefore, even if the failure to send Ainsworth a ballot constitutes conduct which may be deemed improper, such conduct could not have affected the election results.

Based on the above including the absence of evidence that the Activity failed to exercise proper care and diligence in providing employees with mail ballots, I find that the investigation fails to establish that there was improper procedural conduct of the election which improperly affected the results of the election. Accordingly, Objection No. 1 is found to have no merit. 4/

Objection No. 2 - I shall treat the following as the second objection:

> **Improper conduct by AFGE occurred on March 9, one day prior to the election when it distributed a leaflet critical of NFFE. Such late distribution is objectionable as it denied NFFE a reasonable opportunity to respond thus improperly affecting the election results.**

The AFGE leaflet containing the statements which are alleged to be critical of NFFE is attached as Appendix B. The flyer was distributed on March 9 and is the only evidence submitted by NFFE to support its second objection.

3/ Examination of the eligibility list shows that employee Louis A. Richmond appears as having cast an unchallenged ballot. As it is not necessary to determine whether Richmond voted manually or by mail, I shall make no finding as to whether he voted manually, by mail or whether he in fact cast a ballot.

4/ With respect to NFFE's contention that employees of the LIPSCOMB were denied an opportunity to vote, the allegation was not raised in the objections filed March 15, 1976. The allegation was first raised in its letter to the Area Administrator dated March 22. Therefore, inasmuch as the allegation was raised outside the five-day objecting period, I shall not treat it as a timely objection. In any event, since it is alleged that twenty-four employees aboard the LIPSCOMB, sixteen of which appear on the eligibility list, were denied an opportunity to vote, it could not have improperly affected the results of the election inasmuch as the AFGE won the election by 32 votes. Thus, if the 16 eligible employees aboard the LIPSCOMB had voted, AFGE would still have received a majority of the valid votes counted plus challenged ballots.

The first statement in the flyer which NFFE alleges is objectionable is: The most significant advantage of exclusive recognition is that you will be entitled to a negotiated agreement covering conditions now pre-determined and agreed upon by the Sweetheart Contract presently existing. NFFE contends this is a damaging, untruthful reference to the collective bargaining agreement and that it did not have an opportunity to demonstrate the merits of its contract with management and its work under the contract is not pre-determined nor a "sweetheart contract".

AFGE states that references were made to the "sweetheart contract" between management and NFFE in literature distributed prior to the original election held on January 27, 1976, and again in a leaflet distributed to eligibles voting by mail on February 23, 1976. AFGE states that no objections were raised to either of these flyers. The Activity takes no position concerning NFFE's objection to the flyer.

The term "sweetheart contract" is a reference commonly used by a rival labor organization to describe the contract between the incumbent and management. The statement made by AFGE that a sweetheart contract presently exists is the type of propaganda frequently used during an election campaign. It is neither misleading nor deceptive. It is the type of statement that employees could easily recognize and assess as campaign propaganda. Campaign literature which contains propaganda easily recognizable as such by the voters and which is neither deceptive nor misleading is not sufficient grounds for setting aside an election.

It has been held that in order to set aside an election on the grounds that the other party did not have a reasonable opportunity to make a reply, the statements must have amounted to gross misrepresentations of material facts. Inasmuch as the statements made by AFGE did not constitute gross misrepresentations of material facts, NFFE's argument that there was no time for a reply is not applicable. A party to an election is not entitled, as a matter of right, to "the last word".

NFFE finds objectionable the statements in the AFGE flyer in paragraph three: "Strength in numbers is the only weapon you have in getting legislation passed for Government Employees. All benefits you now have were voted for in Congress; without a strong Union to appeal for Federal employees needs, you could not enjoy these benefits."

NFFE argues that AFGE's statement is a strong and misleading innuendo that NFFE is not a sufficiently strong union to lobby effectively for beneficial legislation for Federal employees.

This portion of the flyer is campaign puffing common to election campaigns. Exaggerations, self-congratulations are not the basis for setting aside an election in the absence of evidence that deceptions or trickery interfered with employees' free choice.

The next statement NFFE contends is objectionable is the following: "The American Federation of Government Employees (AFL-CIO) is the largest Federal Employees Union in the USA representing employees such as yourself." NFFE contends it did not have time to respond that it is the largest independent federal employee union.

NFFE has not alleged that AFGE's statement is false or is a misrepresentation. NFFE argues that it didn't have sufficient time to argue that it is the largest independent federal union. As stated above, in order to set aside an election on the grounds that there was no opportunity to reply, the statements must have been gross misrepresentations of material fact.

The final statement NFFE claims is objectionable is the fifth paragraph: "Your vote tomorrow does not require that you ever belong to ANY UNION! AFGE does and will continue to solicit your support so that we may work together in this great endeavor. Your vote for the American Federation of Government Employees (AFL-CIO) will count and your rewards will be many.

NFFE contends that it should have had time to respond to this statement inasmuch as it leads to the incorrect conclusion that the employee must belong to NFFE to vote for NFFE; that voting for NFFE does not count; and that the rewards for voting for NFFE are few.

It is common campaign practice for one organization to assert that it is better than another, that a vote for it is worth more than a vote for the other union, and that the benefits if one union gains exclusive recognition will be greater than if the other union wins.

I disagree with NFFE's argument that any portion of the statement would lead employees to conclude that membership in NFFE was a requirement in order to vote for NFFE. The statements in the fifth paragraph of the leaflet are campaign propaganda and are easily recognizable as such.

Based on the above I find that the AFGE leaflet circulated the day before the election contained campaign propaganda of the nature frequently used by labor organizations during an election, and that it was easily recognizable as such and contained no misrepresentations of material fact. Accordingly, distribution of the leaflet by AFGE does not constitue improper conduct which would have affected the outcome of the election. Therefore, Objection No. 2 is found to have no merit.

Having found that no objectionable conduct occurred improperly affecting the results of the election, the parties are hereby advised that a Certification of Representative in behalf of the American Federation of Government Employees, Local 3310 will be issued by the Area Administrator, absent the timely filing of a request for review.

Pursuant to Section 202.20(f) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Assistant Regional Director as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business May 17, 1976.

LABOR-MANAGEMENT SERVICES AIMINISTRATION

DATED: April 30, 1976

LEM R. BRIDGES, Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-11-76

758

Mr. Joseph Girlando
National Representative
American Federation of Government
Employees
AFL-CIO, Local 2735
300 Main Street
Orange, New Jersey 07050

Re: Veterans Administration Hospital
East Orange, New Jersey
Case No. 32-4322(RO)

Dear Mr. Girlando:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the above-captioned petition as untimely.

In agreement with the Regional Administrator, and based on his reasoning, I find that the instant petition was not timely filed in accordance with Section 202.3(c) of the Regulations of the Assistant Secretary.

Accordingly, and noting that the matter raised for the first time in your request for review (i.e., that the Incumbent has not adequately represented guards) has not been considered (see Report On Ruling No. 46, copy attached), your request for review seeking reversal of the Regional Administrator's dismissal of the subject petition, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

April 12, 1976 In reply refer to Case No. 32-4322(RO)

Joseph Girlando, National Representative
American Federation of Government Employees,
AFL-CIO, Local 2735
300 Main Street
Orange, New Jersey 07050

Re: Veterans Administration Hospital
East Orange, New Jersey

Dear Mr. Girlando:

The petition filed in the above captioned case has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as the petition was not timely filed in accordance with Section 202.3(c) of the Regulations of the Assistant Secretary.

Evidence adduced disclosed that petitioner had previously filed a representation petition on March 3, 1972, seeking to sever from an existing "mixed" unit of guards and non-guard employees, all of the non-guard employees. By decision dated September 28, 1973, the Assistant Secretary severed the non-guard employees from the existing unit and directed an election.1/ With respect to the guard employees, no question of representation ever existed as a result of the filing of the above petition.

Moreover, evidence adduced disclosed that the employees in the unit petitioned for are currently represented by Local 1154, National Federation of Federal Employees and a collective bargaining agreement is currently in effect. The agreement, which was signed by the Activity and the incumbent exclusive representative on August 23, 1974, became effective October 6, 1974, when it was approved by the Chief Medical Director. The agreement, by its terms, is effective for three (3) years from its effective date..

1/ Veterans Administration Hospital, East Orange, New Jersey, A/SLMR No. 311.

The petition in the instant case, filed November 13, 1975, is untimely since a valid agreement is in effect and the petition has not been filed during the open period. The mere fact that non-guard employees were severed from the "mixed" unit is not a sufficient basis to conclude that unusual circumstances exist, hence, Section 202.3(c)(3) of the Regulations is not applicable in the instant case.

I am, therefore, dismissing the petition.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Activity. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C 20216, not later than the close of business April 28, 1976.

Sincerely yours,

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
8-11-76

759

Ms. Helen I. Harrell
2025 Peachtree Road
Apartment 927
Atlanta, Georgia 30309

Re: National Treasury Employees Union
Chapter 26 (Internal Revenue Service)
Case No. 40-6673(CO)

Dear Ms. Harrell:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, and noting that allegations raised for the first time in your request for review (i.e., that the Respondent had treated your case differently from other specifically named employee cases), will not be considered by the Assistant Secretary (see Report on Ruling No. 46, copy attached), your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

March 11, 1976

Ms. Helen I. Harrell
2025 Peachtree Road
Apartment 927
Atlanta, Georgia 30309

RE: National Treasury Employees Union
Chapter 26
(Internal Revenue Service)
Case No. 40-6673(CO)

Dear Ms. Harrell:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You have alleged that Respondent violated Section 19(b)(1) of Executive Order 11491, as amended, by failing to adequately represent you in a grievance procedure.

Investigation reveals that you submitted a continuous consideration application for promotion in April, 1974. However, you were inadvertently omitted from consideration for a Tax Examiner position announced as vacant September 19, 1974, and filled November 19, 1974. When subsequently you learned you had not been considered, you filed a grievance on February 21, 1975, under the negotiated grievance procedure.

In support of your allegation you contend that Respondent: (1) allowed "unauthorized management representatives" to attend your grievance meetings; (2) did not timely schedule some of the meetings; (3) failed to see that a "desk audit" was conducted following your request; (4) permitted "manipulation" of selection criteria for the Tax Examiner position for which you applied; and, (5) did not ensure that your "proper performance evaluation" was used in considering you for a promotion.

Grievance meetings were scheduled February 26, 1975, March 6 and 11, 1975, April 18, 1975, and May 19, 1975. One or two of Respondent's representatives acted on your behalf at each meeting.

Although officials of the Personnel Office assisted management's representatives at each meeting, there is no evidence that Respondent had the authority to prohibit their attendance. Such Personnel Office assistance is apparently routinely permitted under the grievance procedure provided in the bargaining agreement between Respondent and the Internal Revenue Service.

Moreover, Respondent is without the authority to effect the requested "desk audit" or to determine which supervisory evaluation form is to be submitted to a ranking official considering an applicant for promotion. Evidence indicates that there are statutory procedures for classification appeals to effect such a "desk audit" and that both supervisory evaluations available to the ranking official yielded the same score.

While the grievance meetings in question were not strictly scheduled in accordance with the deadlines set forth in the negotiated grievance procedure, there is no evidence that Respondent encouraged dilatory scheduling or otherwise attempted to delay the grievance procedure. Steps 1 and 2 meetings were timely scheduled, and delays in scheduling the Steps 3 and 4 meetings were caused, respectively, by your desire to be represented by someone other than Respondent's agents and by the inability of the District Director or his assistant to immediately attend the final meeting.

There is no evidence that Respondent was a party to the selection process in selecting a candidate for the Tax Examiner vacancy or exercised any control or influence over the selection criteria.

There is, therefore, no evidence that Respondent, by its actions on your behalf during the grievance proceedings, failed to represent you as required by Section 10(e) of the Order.

You have also alleged that Respondent violated Section 19(b)(1) of the Order by discouraging your filing of grievances. Specifically, you contend that Ms. Mary Jean Royer, President of Chapter 26, required you to sign an unnecessary affidavit before agreeing to represent you, and made dissuasive personal statements about your grievances.

However, evidence indicates that the affidavit requested by Ms. Royer was necessitated by the late filing of your grievance. In fact, the affidavit enabled your grievance to be considered timely filed, and was used by Respondent to your benefit.

The allegedly discouraging remarks were merely the personal comments of Ms. Royer. There is no evidence that such remarks interfered with your right to file a grievance, and, as the evidence shows, did not prevent the further processing of your grievance nor did it otherwise impede Respondent in representing you.

Thus, there is no evidence that Respondent attempted to discourage your filing of grievances or in any way interfere with the exercise of your protected rights.

Finally, you have alleged that Respondent violated Section 19(b)(1) of the Order by failing to invoke arbitration for your grievance.

However, as the exclusive representative of employees in the bargaining unit of which you are a member, Respondent is entitled to exercise discretion in prosecuting employee grievances. Section 10(e) of the Order states, in relevant part, that:

> (e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership.

In its decision No. 74A-54, the Federal Labor Relations Council recognized the right of the exclusive representative to employ discretion in providing representation for unit employees:

> In summary, the second sentence of section 10(e) does not impose an affirmative duty on the exclusive representative to act for unit employees whenever it is empowered to do so under the Order, but only prescribes the manner in which the exclusive representative must provide its services to unit employees when acting within its scope of authority established by other provisions of the Order.

There is no evidence which would indicate that Respondent acted with discrimination in rejecting arbitration for your grievance. Indeed, Respondent's decision not to invoke arbitration was based entirely on its appraisal of the merits of your grievance. Such a decision was, therefore, permissable within the meaning of Section 10(e).

Thus, there is no evidence that Respondent failed to provide adequate representation within the meaning of Section 10(e), or otherwise interfered with, restrained, or coerced you in the exercise of your rights guaranteed by the Order. Absent such evidence, there is no reasonable basis for the complaint.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, Washington, D. C. 20216, not later than the close of business March 26, 1976.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-13-76

760

Mr. Raymond B. Swaim
President, American Federation of Government
Employees, Local 1858, AFL-CIO
Building 3648
Redstone Arsenal, Alabama 35809

Re: Department of the Army
United States Army Missile Command
Redstone Arsenal, Alabama
Case No. 40-6829(GA)

Dear Mr. Swaim:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the above-captioned Application for Decision on Grievability or Arbitrability.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that the instant Application was properly dismissed.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the subject Application, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

April 8, 1976 ATLANTA, GEORGIA 30309

Mr. Raymond B. Swaim, President
American Federation of Government
Employees, Local 1858, AFL-CIO
Building 3648
Redstone Arsenal, Alabama 35809

Re: Department of the Army
United States Army Missile Command
Redstone Arsenal, Alabama
Case No. 40-6829(GA)

Dear Mr. Swaim:

The above-captioned case, initiated by the filing of an Application For Decision on Grievability or Arbitrability under Section 6(a)(5) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted.

Investigation discloses that the Applicant and the Activity are parties to a labor-management agreement effective March 6, 1975, for a three-year period covering approximately 5,000 civilian employees of the Activity. The agreement in Article V contains a grievance and arbitration procedure. Section 3 of that Article provides for a three-step grievance procedure leading to arbitration, which is set out in Section 5.

On December 4, 1975, Robert E. Grisham, GS-11 Editor (Printed Media) filed a grievance alleging that Article XV which deals with reduction in force, demotions and involuntary assignments had been violated when the Activity failed to assign him to a GS-11 Writer position in the Maintenance Directorate. Grisham had previously been offered a GS-11 position, but the offer was withdrawn and Grisham was offered a change to lower grade.

The parties met on December 17, 1975, in accordance with Step 2 of the grievance procedure. The Activity rendered its second step decision on December 18. It was the position of the Activity that the grievance was not grievable under Article V because Grisham had appeal rights concerning a reduction in force issue.

The grievance was not processed through Step 3 of the grievance procedure nor was arbitration invoked as provided in Section 5 of Article V.

The Application seeks a determination on whether Grisham's grievance is on a matter subject to the grievance procedure in the contract. It is your position that the grievance is grievable under Article V regardless of whether the article alleged to have been violated makes reference to Civil Service appeal rights for contesting the challenged action. You contend that Article XV was negotiated in good faith and that a violation of that Article should be grievable.

Section 205.2(b)[1/] of the Regulations of the Assistant Secretary provides in part as follows:

> . . . an application for a decision by the Assistant Secretary as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement . . . must be filed within sixty (60) days after service on the applicant of a written rejection of its grievance on the grounds that the matter is not subject to the grievance procedure in the existing agreement . . .

Article V, as previously stated, contains the arbitration procedure. Applicant has not invoked arbitration.

The Assistant Secretary in his Report on Ruling No. 56, a copy of which is enclosed, stated in part:

> For the purposes of computing the sixty (60) day filing period of an Application for Decision on Grievability or Arbitrability under Section 205.2(a) of the Assistant Secretary's Regulations, there must be a final written rejection after the arbitration clause is invoked. (Emphasis added)

Inasmuch as the Applicant failed to invoke arbitration, the Activity did not provide the Applicant with its final written rejection of the grievance as required by Report No. 56. Therefore, no determination can be made as to whether the grievance is on a matter subject to the grievance procedure in an existing agreement.

There is also a grievance filed by Helen G. Childress on November 21, 1975. Only the Grisham grievance is alluded to in Item 4A of the Application and only the Grisham grievance is alluded to in Item 4B. The Activity responded only to the Grisham grievance. Based on the references in Items 4A and 4B and the fact that the Activity only treated the Grisham grievance as being the basis for the Application, I have not considered the Application as containing a request for determination on the Childress grievance.

I am, therefore, dismissing the Application.

1/ Section 205.2(b) was formerly Section 205.2(a).

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request for review must be served on the undersigned as well as the other parties.

A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business April 23, 1976.

Sincerely,

B. R. WITHERS, JR.
Acting Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-13-76

761

Pat Morris, Esq.
Nicolas and Morris
Suite 454, The Klee Square Building
505 South Water Street
Corpus Christi, Texas 78401

Re: AMC Department of the Army
Corpus Christi Army Depot
Corpus Christi, Texas
Case No. 63-6000(CA)

Dear Ms. Morris:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that there is insufficient evidence to establish a reasonable basis for the instant complaint and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

March 18, 1976

In reply refer to: 63-6000(CA)
Defense/Army, AMC Department of Army, Corpus Christi Army Depot, Corpus Christi, Texas/Heliodoro V. Cueva

Mr. Heliodoro V. Cueva
517 Ruben Chavez Road
Robstown, Texas 78380

Dear Mr. Cueva:

The above-captioned case alleging violations of Section 19(a) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant. Although you were afforded additional opportunity to submit evidence in support of the allegations, none has been received.

In this regard, your complaint alleges Mr. Willie Davila, your supervisor, violated Section 19(a)(1), (2), and (4) of the Order by reprisals against you in the form of harassment, discrimination, and coercion because of your activities as union steward. Specifically, you argue that an example of the allegations was a April 10, 1975, entry in your personnel card standard form 7b, used in preparation of your annual performance evaluation.

Your Respondent employer contends your supervisor, Willie Davila, made the above reference entry solely because of your job-related performance and/or behavior. Additionally, you did not dispute your employer's contention that at the time of your complaint you had not been a union steward for over one year. In summary, coincidence or correlation does not prove causation.

The Assistant Secretary's Regulations, Section 203.6(e) provide "the complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in the complaint . . ."

You did not submit any evidence to show a causal relationship between your past position or duties as union steward and your present allegations of reprisal.

The evidence also reveals that your 19(a) (6) complaint was not presented in your pre-complaint stage of this proceeding as required by Section 203.2(a) of the Assistant Secretary's Regulations. The Assistant Secretary has previously held that issues not raised as a charge in the pre-complaint stage cannot be entertained in a formal complaint since the activity was not given the 30 day opportunity to dispose of the charge informally as provided by Section 203.2(b).

To conclude, in addition to all of the above, the evidence submitted indicates you apparently previously processed the issues raised by this complaint under your activity administrative grievance procedure.

Section 19(d) of the Order states, ". . .Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures (Emphasis supplied)."

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor Management Relations, 14th & Constitution, N.W., Washington, D. C. 20216, not later than close of businesss April 8, 1976.

Sincerely,

Gordon E. Brewer

Cullen P. Keough
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

8-13-76

762

Mr. George Tilton
Associate General Counsel
National Federation of Federal
Employees
1016 16th Street, N.W.
Washington, D.C. 20036

Re: Adjutant General
State of Alabama
Case No. 40-6825(CA)

Dear Mr. Tilton:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case which alleges a violation of Sections 19(a)(1) and(6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis for the complaint was not established and, consequently, further proceedings in this matter are unwarranted. Thus, in my view, there is insufficient evidence to establish a reasonable basis for the allegation that the Respondent unilaterally altered the established selection criteria and the merit promotion plan.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the subject complaint is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

May 5, 1976

Mr. Henry Rushing, President
Local 1730, National Federation
of Federal Employees
3739 Honeysuckle Court
Montgomery, Alabama 36109

Re: The Adjutant General
State of Alabama
Case No. 40-6825(CA)

Dear Mr. Rushing:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted.

The complaint alleges, in essence, that Respondent changed the established practice and criteria used in the selection to fill a vacancy for flight engineer. The complaint further alleges that, following the filing of a grievance under the agency grievance procedure by four unsuccessful applicants for the vacancy, Respondent denied the grievants their request for a hearing.

The Complainant is the exclusive representative of a unit of approximately 450 employees of Respondent.

Investigation discloses that after two announcements were made for the filling of a flight engineer vacancy at Army Aviation Support Facility No. 1, Montgomery, Alabama, Respondent selected a candidate to fill the position on April 20, 1975.

On April 29, 1975, four unsuccessful applicants for that position filed a grievance under the agency grievance procedure. The applicants, in their written grievance, requested "a hearing in the manner in which selection was made to fill the vacancy of Announcement No. 75-45." Respondent rejected the grievance on June 5, 1975. The rejection of the grievance constituted a rejection of the request for a hearing.

Respondent's rejection of the grievance was based on three considerations: (1) that the position of flight engineer was properly filled with an applicant as well or better qualified than the grievants;

(2) the grievant-applicants were considered before selection of an applicant from a certificate of eligibles and; (3) the non-selection of candidates is not a grievable matter.

Complainant has submitted no evidence that the established selection criteria was changed in the selection of the flight engineer vacancy. The investigation discloses that the provisions of the merit promotion plan were utilized in the selection process. There is no evidence that personnel policies or practices were changed as a result of the Respondent's selection of the candidate to fill the vacancy.

In the absence of evidence that Respondent unilaterally altered the established selection criteria in filling the job vacancy, I find that Complainant failed to satisfy the burden of proof required by the regulations. 1/

With respect to Respondent's denial of the hearing request, the denial of that request is implicit in the denial of the grievance. Rejection of the grievance on its merits carries with it a rejection of the request for a hearing. The grievants are not entitled to a hearing as a matter of right under the Executive Order.

As the grievance arose under the agency grievance procedure, even if Respondent improperly failed to apply the provisions of its own grievance procedure, such a failure, standing alone, would not constitute interference with employee rights, assured by the Order, and is therefore not violative of Section 19(a)(1) of the Order. 2/

Moreover, even though the issues in both the grievance and the complaint are not precisely defined but are sketchily drawn, I find that the fundamental issues in the complaint were raised in the April 29, 1975, grievance. The grievance cites the "manner in which selection" was made to fill the vacancy. The complaint alleges, as an unfair labor practice, the change in "method and criteria used in job selection." The issues in both are sufficiently alike to conclude that Section 19(d) bars consideration of the issue under Section 19. 3/

I am, therefore, dismissing the complaint in its entirety.

1/ Section 203.6(e) of the regulations provide, in relevant part: The Complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in the complaint. . .

2/ Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR No. 334; Naval Station, San Diego, California, A/SLMR No. 452.

3/ Section 19(d) provides, in pertinent part: Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure of the complaint procedure of this section, but not under both procedures.

Pursuant to Section 203.8(e) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business May 20, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

8-13-76

763

Mr. Pete Evans
National Representative
American Federation of Government
Employees
4347 South Hampton Road - Suite 110
Dallas, Texas 75237

Re: Texas Air National Guard
Dallas, Texas
Case No. 63-6060(CA)

Dear Mr. Evans:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the subject case, which alleges a violation of Section 19(a)(1), (2), (3), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis has not been established for the complaint and consequently further proceedings in this matter are unwarranted. In reaching this disposition, I find, in agreement with the Regional Administrator, that the efficiency board proceedings did not constitute a "formal discussion" within the meaning of Section 10(e) of the Order and, consequently, the Complainant had no right to be represented, or to have access to the transcript of that proceeding. I also conclude that, under the particular circumstances herein, the Department of the Air Force was not a proper Respondent since no bargaining relationship with the Complainant or specific involvement by the Air Force in this proceeding has been shown.

Accordingly, and noting the absence of any evidence of discrimination based on union considerations or improper assistance of a labor organization, your request for review, seeking reversal of the Regional Adminsitrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

March 19, 1976

In reply refer to: 63-6060(CA)
Defense/Air Force, Washington,
D. C., Texas Air National Guard
Council of AFGE Locals (TANG)

Mr. Pete Evans, National Representative
American Federation of Government Employees
4347 South Hampton Road, Suite 110
Dallas, Texas 75237

Certified Mail # 202000

Dear Mr. Evans:

The above-captioned case alleging violations of Section 19(a) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted, since no reasonable basis for the complaint has been established.

The complaint alleged essentially that the Agency violated Sections 19(a)(1), (2), (3), (5), and (6) of Executive Order 11491, as amended, by improperly inquiring into internal union affairs, by reviling and demeaning union members and officers, and by denying the exclusive representative the opportunity to be represented in the closed hearing where the alleged improper conduct took place.

You requested that the transcript of the hearing be furnished by the Respondent because you believed that record contained evidence which would confirm your allegations. In camera examination of the entire record by Labor-Management Services Administration staff has been accomplished. Due to invasion of privacy issues raised by Respondent, the documents supplied by Respondent will not be released to other parties.

Respondent asserts, that the Efficiency Board Proceedings which took place December 12, 1974 and December 13, 1974 at Carswell Air Force Base, Texas, did not constitute "formal discussion" within the meaning of Section 10(e) of the Order. Because there was no discussion of grievances, or personnel policies or practices or working conditions of unit employees, the exclusive representative was not entitled to the opportunity to be present.

Respondent asserts that no matters alleged in you complaint may be construed as a violation of Section 19(a)(2), or Section 19(a)(3), or Section 19(a)(5).

The investigation, particularly in camera review of the hearing transcript, revealed that the proceeding in question was for the sole purpose of determining whether a General Officer in the Texas Air National Guard should be retained or discharged. The entire proceeding was closed to the public. No audience was allowed and all witnesses were sequestered. The conduct of the proceeding and of the participants could not reasonably be expected to become public knowledge.

I find, in assessing the available evidence, nothing which would establish a bargaining relation between the TANG council of AFGE Locals and the Department of the Air Force, nor with the Tactical Air Command, which convened the proceeding. I find no evidence of any obligation to negotiate, or that such obligation has been ignored in violation of Section 19(a)(6). The available evidence contains no support for your complaint that the TANG Council does not continue to enjoy the appropriate recognition accorded it in 1971.

I find no evidence of any attempt by agency management to sponsor, control, or otherwise improperly assist any labor organization.

There is no evidence that any discrimination with regard to hiring, tenure, promotion, or any other condition of employment has occurred or that unit employees have been encouraged or discouraged thereby with regard to union membership.

I find that the hearing in question was a close, personal, private, military matter, in no way related to the "formal discussion" envisioned by the framers of Section 10(e) of the Order. I find no obligation for the BOARD, which was not a party to an exclusive bargaining relationship to permit the American Federation of Government Employees to be represented. I find no evidence of any improper inquiry into internal union affairs. You have offered no evidence that the manner of address or choice of characterization of union members and representatives, during closed, private proceedings could reasonably be expected to become public knowledge to the detriment of the bargaining relation. You have supplied no evidence that when union officials chose to publicize their treatment, it in fact, had the effect of interference, restraint, or coercion of unit employees in the exercise of their rights under the Order, nor that it would inherently tend to do so.

Section 203.6(e) of the Regulations of the Assistant Secretary provides that a complainant shall bear the burden of proof at all stages of these proceedings. Due to the lack of evidence cited above, I find no reasonable basis for the complaint. I, therefore, dismiss the complaint in its entirety.

Pursuant to Section 203.8(e) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant

Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor Management Relations, 200 Constitution, N. W., Washington, D. C. 20210, not later than close of business April 9, 1976.

Sincerely yours,

Gordon E. Brewer

Cullen P. Keough
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-24-76

764

John Helm, Esq.
National Federation of
Federal Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: Veterans Administration Hospital
Northport, New York
Case No. 30-6573(CA)

Dear Mr. Helm:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint, which alleges violations of Section 19(a) (1) and (6) of Executive Order 11491, as amended.

It is concluded that, under all of the circumstances herein, a reasonable basis for the Section 19(a)(1) and (6) allegations in the subject complaint was established. Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in this matter, is granted, and the instant case is hereby remanded to the Regional Administrator, who is directed, absent settlement, to issue a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

April 16, 1976 In reply refer to Case No. 30-6573(CA)

John P. Helm, Esq.
Staff Attorney
National Federation of Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006

Re: Veterans Administration Hospital
Northport, New York

Dear Mr. Helm:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You contend that Respondent's representative violated Sections 19(a)(1) and (6) of the Order when it issued a memorandum on July 30, 1975, notifying certain of its employees that their workweek would be changed from 40 hours to 60 hours effective September 14, 1975. In this respect, you contend that Respondent's action was contrary to the intent of the basic Agreement and, in addition, such change had been planned without the necessary negotiation concerning the procedures to be followed in implementing the change and the impact which the change would have upon the working conditions of the affected employees.

Undisputed evidence shows the following chronology of events:

1. On July 3, 1975, representatives of Respondent met with Mr. K. Vonder Hulls, Vice-President of Local 387, NFFE, to discuss Respondent's proposal to change the workweek for firefighters from a 40 hour workweek to a 60 hour workweek.

2. On July 7, 1975, Respondent's Assistant Hospital Director issued a memorandum to the Chief, Personnel Service, in which it was stated that the parties at the July 3, 1975 meeting were in agreement that the 60 hour workweek would be advantageous both to management and the employees.1/

3. On July 9, 1975, Respondent's Chief of the Protective Section issued a memorandum to the affected firefighters informing them that they would be scheduled on a 60 hour workweek beginning September 7, 1975.

4. On July 14, 1975, Complainant solicited the views of the firefighters concerning Respondent's proposal to change the workweek.2/

5. On July 28, 1975, representatives of Respondent and Complainant met and briefly discussed the July 7, 1975 memorandum of the Assistant Hospital Director. During this meeting, Complainant's representatives informed Respondent that the affected employees objected to the proposed change because of the adverse affect it would have on the hours of work, salary benefits and employee morale.

1/ According to Complainant, no agreement had been reached concerning the proposal since its representative had not discussed the proposal with the employees affected.

2/ The complaint was filed by the National Federation of Federal Employees and although it was intended as a complaint on behalf of Local 387 NFFE, the complaint form, inadvertently, fails to list the local as the party filing the complaint. Nevertheless, the omission is not fatal and I am treating the complaint as having been filed on behalf of Local 387. Hence, the term "complainant" when used refers to Local 387 NFFE.

John P. Helm, Esq.
Staff Attorney, NFFE
Case No. 30-6573(CA)

6. On July 30, 1975, Respondent issued a memorandum announcing the change and stating it would become efective September 14, 1975. A copy of the memorandum was given to Mr. Vonder Hulls.

7. On August 6, 1975, Complainant filed the pre-complaint charge alleging Respondent had violated Sections 19(a)(1) and (6) of the Order by the issuance of the July 30, 1975 memorandum which changed the firefighting staffing pattern.

8. On August 27, 1975, representatives of Respondent and Complainant met to discuss the 60 hour workweek and its impact. Respondent changed the implementation date from September 14, 1975 to October 1, 1975 as a result of this meeting and agreed to furnish certain information concerning the impact of the change on pay, eating facilities, sleeping facilities and the staffing pattern.

9. On September 16, 1975, Respondent met with representatives of Complainant and furnished, in writing, information concerning the impact of the change. Complainant's representatives maintained their objections to the change and explained the reasons for their objections.

10. On September 19, 1975, the complaint was filed.

11. On September 22, 1975, Respondent's Chief Engineer issued a memorandum announcing that the change would not be implemented until January 4, 1976, in order that more favorable compensation could immediately be paid under the Fair Labor Standards Act.

According to Complainant, Respondent per Articles 6, 7, 15 and 31 of the Agreement must negotiate concerning the change in the tour of duty as well as the procedures to be utilized in implementing the change and the impact of the change upon employees. Respondent contends that the decision to change the tour of duty is a management right and is not subject to negotiation nor is it contrary to the Agreement.

Pertinent provisions of the Agreement are as follows:

ARTICLE 6 - MUTUAL RIGHTS AND OBLIGATIONS

1. The Hospital and the Local, on behalf of the employees it represents, accept responsibility to abide by all of the provisions set forth in this agreement. The Hospital and the Local shall not change the conditions set forth in this agreement and amendments except by the methods provided herein, or as required by law or regulation.
....

4. Nothing in this agreement shall restrict the VA in exercising the right, in accordance with applicable laws and regulations, to: direct employees of the VA; hire, promote, transfer, assign, and retain employees in positions within the VA, and to suspend, demote, discharge, or take other disciplinary action against employees; relieve employees from duties because of lack of work or for other legitimate reasons; maintain the efficiency of the Government operations entrusted to the VA; determine the methods, means, and personnel by which such operations are to be conducted; and take whatever action may be necessary to carry out the mission of the VA in situations of emergency.
....

ARTICLE 7 - SUBJECT AREAS OF NEGOTIATION

1. Appropriate subjects for consultation and/or negotiation are, but are not limited to: work environment, supervisor-employee relations, leave scheduling, holidy work scheduling, grievance procedures including arbitration as defined in Executive Order 11491, promotion program, safety, health, and welfare of employees, training, labor-management relations, orderly procedures of appeals in adverse actions, and other matters consistent with the provisions of Executive Order 11491, as amended, and within the administrative authority of the Hospital Director.

2. The parties recognize that the obligation to meet and confer does not include matters with respect to the mission of the VA, its budget; its organization, the number of employees and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. However, this does not preclude the parties from consulting and negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

ARTICLE 15 - CHANGES IN PERSONNEL POLICIES AND PROCEDURES

1. The Hospital agrees to provide an opportunity to the Local to comment on the formulation and implementation of Hospital policies and procedures affecting members of the unit.
....

ARTICLE 31 - WORK SCHEDULES - TOURS OF DUTY

1. Each employee will be assigned a given tour of duty; however, management reserves the right to reassign any employee to a different tour of duty as required to meet the needs of the Hospital.

2. The Hospital agrees to consider the Local proposal for a change in a tour of duty for the work group when the Local indicates that such a change is desired by a majority of the employees concerned. It is understood by both parties that any proposed change in tours of duty shall not interfere with the operation of the Hospital and the department concerned.

3. New schedules involving days off and change in tour of duty shall be posted not less than two (2) calendar weeks in advance.

4. The Hospital will schedule employees to provide for a break of two work tours after completion of a regular eight hour tour of duty, except in case of emergency or schedule change as outlined in Section 1.

5. Where permanent tours of duty are in effect and a vacancy occurs within the unit, qualifications and performance evaluations being equal, the senior employee in the unit requesting a change shall receive preference in the selection of the shift.

According to Complainant, Article 31 of the Agreement, paragraph 4, is clear and unambiguous in setting forth an eight hour tour of duty and there is no clause in the Agreement which would indicate anything other than a 40 hour work week. Although Respondent could assign a firefighter from one of the permanent 8 hour tours of duty, no other interpretation was intended, according to Complainant. Respondent maintains that nothing in Article 31 or any other Article of the Agreement establishes a 40 hour work week as a result of negotiations or in any way demonstrates that this was intended by the parties.

One of the basic issues in the instant complaint is whether the decision to change the tour of duty constitutes a matter falling within the ambit of Section 11(a) of the Order or within the ambit of Section 11(b) of the Order and if the latter, whether Respondent by virtue of Article 31 and other Articles of the Agreement has waived its right to exclude it from negotiation.

There is no dispute among the parties that the 8 hour a day, 40 hour workweek was an established condition of employment prior to the granting of exclusive recognition to the Complainant, nor is there any dispute that employees were assigned to one of three daily 8 hour shifts to provide round-the-clock service. In Plum Island Animal Disease Laboratory, Department of Agriculture, Greenport, New York, FLRC No. 71A-11, Volume 11, dated July 14, 1971, the Council stated: "... the establishment or change of tours of duty was intended to be excluded from the obligation to bargain under Section 11(b). --- Further, the specific right of an agency to determine the "numbers, types and grades of position or employees" assigned to a shift or tour of duty, as provided in Section 11(b), obviously subsumes the agency's right to fix or change the number and duration of those shifts or tours...".

The Council's position with respect to changes in tours of duty (basic workweek and hours of duty) is clearly set forth in the Animal and Plant Health Inspection Service case, FLRC No. 73A-36,3/ wherein the

3/ See American Federation of Government Employees, National Joint Council of Food Inspection Locals and Office of the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, FLRC No. 73A-36, Volume 73, dated June 27, 1975.

Council stated: "A proposal relating to the basic workweek and hours of duty of employees is not excepted from an agency's bargaining obligation under Section 11(b) unless, based on the special circumstances of a particular case, the proposal is integrally related to and consequently determinative of the staffing pattern of the agency, i.e., the numbers, types and grades of position or employees assigned to an organizational unit, work project or tours of duty of an Agency".

In the instant case, the employees assigned to the new tour of duty would remain the same as will their job descriptions; however, the 8 hour around-the-clock shifts would be eliminated by the change in the tour of duty, the duration of the work week would change and the number of employees assigned to a tour of duty would change. In this respect, the evidence shows that a tour of duty would consist of two consecutive 24 hour periods plus a consecutive 12 hour period. To require bargaining on Respondent's decision to change the tour of duty would require bargaining over the elimination of shifts and the reassignment of employees to new shifts, both of which would involve the number of employees assigned to a particular tour of duty.

Accordingly, I conclude that Respondent's decision to implement the change falls within the ambit of Section 11(b) of the Order and, hence, is excluded from negotiations unless Respondent chooses to negotiate its decision.

With respect to Respondent's waiver of its Section 11(b) rights, I am convinced, after a careful reading of the Agreement, that Respondent has not waived such right. Although Article 31 is entitled "Work Schedules - Tours of Duty", no evidence has been adduced that the language contained therein was intended to limit Respondent's right to establish or change a tour of duty. The language contained therein is nothing more than a delineation of certain procedures to be followed, none of which infringe upon Respondent's Section 11(b) rights. Nor do I find that the language contained in Articles 6, 7 and 15, or any other Articles of the Agreement infringe upon Respondent's Section 11(b) rights insofar as they relate to changing or establishing tours of duty. Moreover, Article 7, Section 2, clearly excludes from the subject area of negotiations the matters specifically enumerated in Section 11(b) of the Order.

Accordingly, I conclude that Respondent has not exercised its right to negotiate Section 11(b) matters insofar as they relate to

establishing or changing tours of duty and, hence, did not violate the Order by issuing the memorandum of July 30, 1975.

Notwithstanding the above, Respondent was obligated to bargain with respect to the procedures it intended to utilize in implementing its decision and the impact of its decision upon employees to the extent consonant with applicable laws and regulations. Evidence adduced discloses that Respondent met any obligation it had in this respect and contrary to Complainant's contentions, I find no evidence that Respondent was unwilling to bargain in this respect, nor do I find any evidence that Respondent approached discussions with a closed mind. Moreover, no evidence has been adduced that Complainant ever requested to bargain over procedures to be utilized or the impact upon the employees prior to the filing of the charge. Rather, the evidence discloses that Complainant objected to Respondent's decision and sought certain information concerning the procedures to be utilized and the impact.4/

A study of the sequence of events shows that there were several meeting between representatives of Respondent and Complainant subsequent to the July 3, 1975 meeting. Respondent, as a result of these meetings, furnished written information on the impace of the change and postponed the implementation date on three separate occasions. Accordingly, I find that Respondent afforded Complainant ample opportunity to meet and confer concerning the change and/or to request bargaining prior to implementation.

Having concluded that Respondent has not violated Sections 19(a)(1) and (6) of the Order, I am dismissing the complaint.

4/ Although Complainant was afforded an opportunity to submit signed statements from Mr. K. Vonder Hulls, Vice-President and Mr. Frank Longobucco, concerning the sequence of events and requests to negotiate, no such statements were submitted by either individual.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business May 3, 1976.

Sincerely yours,

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

Mr. Herbert W. Scott
President, Local 1085
American Federation of Government
Employees, AFL-CIO
3913 Ohio Street
San Diego, California 92104

AUG 24 1976

Re: Navy, Marine Corps Recruit Depot
San Diego, California;
Navy, Naval Air Systems Command,
NAS North Island; and
Navy, NAS North Island
Case Nos. 72-6050, 72-6051
and 72-6052

Dear Mr. Scott:

This is in connection with your request for review seeking reversal of the Regional Administrator's Consolidated Report and Findings on Petitions for Amendment of Certification and Recognition in the subject case.

I find that your request for review is procedurally defective since it was filed untimely. In this regard, it was noted that the Regional Administrator issued his Consolidated Report and Findings in the instant case on July 28, 1976. As you were advised therein, a request for review of that Consolidated Report and Findings had to be received by the Assistand Secretary not later than close of business August 12, 1976. Your request for review postmarked August 16, 1976, was received by the Assistand Secretary subsequent to that date.

Accordingly, since your request for review was filed untimely, the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's Consolidated Report and Findings is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

NAVY MARINE CORPS RECRUIT DEPOT SAN DIEGO, CALIFORNIA	-ACTIVITY	
-AND-		CASE NO. 72-6050
AFGE, LOCAL 1085	-PETITIONER	
NAVY NAVAL AIR SYSTEMS COMMAND NAS, NORTH ISLAND	-ACTIVITY	
-AND-		CASE NO. 72-6051
AFGE, LOCAL 1085	-PETITIONER	
NAVY NAS, NORTH ISLAND	-ACTIVITY	
-AND-		CASE NO. 72-6052
AFGE, LOCAL 1085	-PETITIONER	

CONSOLIDATED REPORT AND FINDINGS

ON

PETITIONS FOR AMENDMENT

OF

CERTIFICATION AND RECOGNITION

Upon petitions for amendment of certification filed in accordance with Section 202.2(c) of the Regulations of the Assistant Secretary, the undersigned, after posting of Notices of Petition, has completed his investigation and finds as follows: 1/

1/ Notices of Petition were posted May 12, 1976. On July 9, 1976, a member of Petitioner telephonically informed the Area Office of certain alleged irregularities with regard to the notices sent to the members as well as the April 9, 1976, meeting. These allegations were repeated in a letter from this individual received in the Area Office July 27, 1976. In view of the disposition of these petitions as set forth below, and since these allegations were not raised within 10 days of the posting of the Notices of Petition, an investigation has not been made of these alleged irregularities since the undersigned concludes, and hereby finds, that the raising of said allegations is untimely.

A Certification of Representative was issued on June 21, 1971, Case No. 72-2445 (RO) certifying the American Federation of Government Employees, AFL-CIO, Local 1085 as the exclusive representative of:

Included: All civil service general schedule and wage board civilian employees of the Marine Corps Recruit Depot, San Diego, California.

Excluded: Managers, supervisors, professional employees, persons performing Federal personnel work in other than a purely clerical capacity, all fire protection personnel, guards and temporary (limited time) employees.

A Certification of Representative was issued March 3, 1971, Case No. 72-1989 certifying the American Federation of Government Employees, Local 1085 as the exclusive representative of:

Included: All non-professional employees of the Naval Air Systems Command, Representative Pacific, located at the Naval Air Station, North Island and Naval Air Station, Miramar.

Excluded: All professional employees, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity, supervisors, and guards as defined in Executive Order 11491.

On July 3, 1969, under Executive Order 10988, as amended, American Federation of Government Employees, Local 1085 was recognized as the representative of a unit of:

Included: All non-supervisory trades and labor Civil Service personnel at the Naval Air Station, North Island.

Excluded: Those included in other specialized units having exclusive recognition.

The Petitioner proposes to amend the certifications in each case by changing the name of the exclusive representative at each Activity to the American Federation of Government Employees, Inter-Departmental Local 2135, pursuant to an asserted merger of Local 1085 with Local 2135 by a secret ballot election. No objections have been filed by any of the Activities involved, or by any other party or individual.

The investigation discloses that, on March 22, 1976, Petitioner sent by regular mail to each of its members a notice of special meeting to be held on April 9, 1976, concerning the following matters:

"The subject for discussion at this 'special meeting' will be, whether or not the Naval Air Local #1085 Wage Board and Inter-Departmental Local #2135, General Schedule employees should consolidate.

"Further discussion will be held concerning the change of representation of the United States Marine Corps, Recruit Depot unit and the United States Naval Air Systems Command unit."

A second notice was enclosed in the March 22, 1976, mailing which stated in pertinent part:

"This is to inform you of an election to be held at Local 1085's next regular meeting on April 13, 1976, 7:30 p.m., 3913 Ohio St., Suite 201, San Diego, Ca., 92104.

"The election will be by secret ballot to decide for or against consolidation and change of representation, of existing exclusive units of Local #1085, as discussed in special meeting, April 9, 1976, 7:30 p.m., 3913 Ohio St., Suite 201, San Diego, Ca., 92104."

The minutes of the April 9, 1976, meeting, as prepared by Petitioner's Secretary, reflect that the " . . . subject for discussion at the Special Meeting was the consolidation of Local 1085 with the interdepartmental Local 2135."

The minutes disclose that AFGE National Representative Molina made the following assertions:

"1. The cost for the small local to be represented is becoming greater all the time but consolidation must be by choice of the small locals.

. . .

4. Resources. Large locals have the money and people with the ability to handle the problems . . .

. . .

Each small local in the area has a different contract. Some portions of the contract is (sic) good and will be incorporated into the new contract after consolidation."

The minutes indicate that a member then asked Molina questions concerning the size of the membership of Local 2135 and a comparison of the money and assets of Local 2135 with Local 1085. This member also inquired as to what effect the proposed action would have on the " . . . assets and seniority belonging to the members in Local 1085 . . ." The response, if any, of Molina to these questions is not set forth.

The minutes conclude in pertinent part with the report that Molina stated that the "Naval Station Local 1211, VA Regional Office, DPSCPAC, (and) Border Customs" would " . . . all be in Local 2135 very soon", a statement by a member that " . . . Noris has asked if there will be only one contract", and a further statement by this employee that all equipment and assets of 1085 would go into consolidation with Local 2135 if the merger went through.

Rough draft notes of the April 13, 1976, meeting, as prepared by Petitioner's Secretary, indicate that the regular meeting was suspended in order to " . . .go into the election for merge (sic) with 2135." Thereupon, ballots were distributed among the attendees with the following result:

"24 members present
24 members voted
20 for merge
4 against merge."

The ballot used by Petitioner at the April 13, 1976, meeting is reproduced below:

O F F I C I A L B A L L O T

AFGE LOCAL UNION 1085

"CONSOLIDATION, CHANGE OF REPRESENTATION

VOTE IN ONE SQUARE ONLY

☐ FOR ☐ AGAINST

PLEASE DO NOT MARK, DEFACE OR LEAVE ANY IDENTIFYING MARKS ON BALLOT

AFTER VOTING, FOLD BALLOT AND PLACE IN BALLOT BOX

* * *

The Assistant Secretary, in Veterans Administration Hospital, Montrose, New York, A/SLMR No. 470, established the following minimum criteria in order to assure that an amendment of certification or recognition changing the designation of the exclusive representative will accurately reflect the desires of the membership and will establish that no question concerning representation exists:

(1) A proposed change in affiliation should be the subject of a special meeting of the members of the incumbent labor organization, called for this purpose only, with adequate advance notice given to the entire membership.

(2) The meeting should take place at a time and place convenient to all members.

(3) Adequate time for discussion of the proposed change should be provided, with all members given an opportunity to raise questions within the bounds of normal parliamentary procedure.

(4) A vote by the members of the incumbent labor organization on the question should be taken by secret ballot, with the ballot clearly stating the change proposed and the choices inherent therein.

Although not free of doubt, it is concluded that in the notice given to the membership of the April 9, 1976, special meeting, the reference to Naval Air Local #1085 Wage Board relates to the Naval Air Station unit of non-supervisory trades and labor Civil Service personnel while the reference to the Inter-Departmental Local #2135, General Schedule identifies the Naval Air Station general schedule unit as certified in Case No. 72-4872 and amended in Case No. 72-5328. Based on this conclusion, the further references to the United States Marine Corps Recruit Depot and to the United States Naval Air Systems Command unit would encompass each of the units involved in the requested amendment of certification or recognition.

In view of the disposition of these petitions as set forth below, the undersigned does not make a finding as to the use of the words "consolidate" and "change of representation" in the notice.

With respect to the April 9, 1976, special meeting, it is noted that the participants considered inter alia the greater financial resources of large local organizations, the anticipated replacement of several individual agreements by one agreement, and the combining of the assets of the two local organizations. The minutes of this meeting do not reflect that the participants at any time addressed themselves to the action requested in the instant petitions; namely, a change of representation from Petitioner to Inter-Departmental Local 2135. Since it cannot be determined with any degree of certainty that such result was implicit in the deliberations of the participants, and in view of the disposition made below by the undersigned of these petitions, no finding is made as to whether the April 9, 1976, meeting considered the issue of a change of representation.

It is the conclusion of the undersigned that the Montrose requirement that the ballot "clearly" states the change proposed and the "choices inherent therein" was not satisfied. In this regard, it is noted that there is no indication on the ballot as to the choice involved in a consolidation involving AFGE Local Union 1085.

In addition, the voter is not informed that the proposed change of representation involves any labor organization other than AFGE Local Union 1085. It is further noted that the words "consolidate" and "change of representation" refer to actions taken pursuant to the Regulations of the Assistant Secretary which can have different legal results. Thus, by including both phrases on the ballot and in the disjunctive, the voters were actually voting on two separate propositions at the April 13, 1976, meeting.

Accordingly, the undersigned finds that the action taken by certain of the members of Petitioner at the April 13, 1976, meeting does not accurately reflect the desires of the membership and, further, that the proposed amendments of certification and recognition are not warranted.

Having found that the proposed amendments of certification and recognition are not warranted, the parties are advised that, absent the timely filing of a request for review of this Report and Findings, the undersigned intends to issue letters dismissing each of the petitions.

Pursuant to Section 202.4(i) of the Regulations of the Assistant Secretary, a party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other party. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received

by the Assistant Secretary not later than the close of business on August 12, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

GORDON M. BYRHOLDT
Regional Administrator
San Francisco Region
9061 Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: July 28, 1976

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

8-26-76

Mr. Gary B. Landsman
General Attorney
Office of the Chief Counsel
United States Customs Service
1301 Constitution Ave., N.W.
Room 3305
Washington, D.C. 20229

766

Re: U.S. Customs Service
Washington, D.C.
Case No. 22-6810(UC)

Dear Mr. Landsman:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's Decision and Order dated June 18, 1976, and his June 16, 1976 Order Denying Motion To Stay Posting of Notice to Employees. I also have considered carefully your Alternative Motion For Bifurcated Hearing.

Following the filing of a petition to consolidate existing exclusively recognized units by the National Treasury Employees Union, the United States Customs Service filed with the Philadelphia Regional Administrator a Motion For Stay of Posting and a Motion To Dismiss Petition. The Motion to Dismiss was based upon the assertion that the Petitioner, the National Treasury Employees Union, lacked standing to file the subject petition. The Acting Regional Administrator determined that the question of the Petitioner's standing herein would be considered, together with the other issues raised by the petition, in a hearing to be directed upon conclusion of the prescribed posting period.

First, with regard to your "renewed" Motion To Stay Posting of the notice, it should be noted that there is no appeal right from the decision to post notices to employees, as pointed out to you by the Acting Regional Administrator. Accordingly, I hereby deny your renewed motion. See Report on a Ruling No. 29, copy attached.

You cite as authority for the filing of your request for review in this matter, Section 202.2(h)(6) and 202.6(d) of the Assistant Secretary's Regulations. I find, however, that no basis exists under the Regulations for the filing of a request for review under the circumstances herein, where review is sought of a Regional Administrator's denial of a motion to dismiss a petition. Thus, while Section 202.2(h)(6) of the Assistant Secretary's Regulations provides for the filing of a request for review of a report and findings with respect to a petition to consolidate,

that Section of the Regulations also states, "Provided however, That where the Regional Administrator . . . determines . . . to issue a notice of hearing, no such report and findings need be issued and such action shall not be subject to review by the Assistant Secretary."

Similarly, Section 202.6(d) of the Assistant Secretary's Regulations provides for a request for review only in situations involving the dismissal of a petition or the denial of an intervention. See also, in this regard, Report on a Ruling No. 8, copy attached, which states that no provision is made for the filing of a request for review of a Regional Administrator's action in denying a motion to dismiss a petition.

Accordingly, your request for review seeking reversal of the Acting Regional Administrator's denial of your Motion to Dismiss is denied. Moreover, under the circumstances herein, I find that insufficient justification exists to support your alternative request that a bifurcated hearing be held in this matter. Accordingly, your motion for a bifurcated hearing also is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachments

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U.S. CUSTOMS SERVICE

Activity

and Case No. 22-6810(UC)

NATIONAL TREASURY EMPLOYEES UNION

Petitioner

DECISION AND ORDER

The United States Customs Service has moved for the dismissal of the petition on two basis: first, that Section 202.2(h)(3) has not been complied with since there are several procedural defects in the documents submitted by the National Treasury Employees Union; and second, that the Petitioner lacks standing under Section 202.1(f) to file in its own name and in its own behalf said petition. The Activity argues that although the NTEU holds recognition in its own name for several of the units sought to be consolidated, NTEU Chapter 101 holds a certification in its name for one or more of the units covered by the petition. The Activity asserts that the Regulations, Report and Recommendation of the Federal Labor Relations Council (FLRC) and the amended Order dictate that only labor organizations holding recognition or certification may petition to have their certified or recognized units consolidated and since there is no evidence that Chapter 101 has joined in the undertaking, the petition should be dismissed.

The Petitioner argues as to the alleged procedural defects, that taking the petition as a whole, including all attachments, there is substantial compliance with the regulations; with respect to the capacity of NTEU to file, that the Activity misreads the law and that it is the proper party to file the petition.

In my opinion, the defects in the petition are technical in nature and have not prejudiced any of the rights of the parties. With respect to the authority or propriety of the NTEU to file the petition, I am not prepared to go behind the representation of the NTEU that it has the authority to file. The legal questions as to

Attachment 1

the propriety or authority of NTEU to file may be taken up and heard together with other issues the parties may raise in a hearing to be directed upon conclusion of the posting period.

IT IS HEREBY ORDERED, that the motion be, and it hereby is,

DENIED.

Frank P. Willette
Frank P. Willette, Acting Regional Administrator

ıted: June 18, 1976

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
9-7-76

767

Mr. Carl P. Maxey
Labor-Management Relations Officer
National Aeronautics and Space Administration
Lyndon B. Johnson Space Center
Houston, Texas
Mail Code AH4

Re: National Aeronautics and Space Administration
Lyndon B. Johnson Space Center
Houston, Texas
Case No. 63-6138(GA)

Dear Mr. Maxey:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability in the above-named case.

The Acting Regional Adminsitrator, in reaching this conclusion that the instant matter was grievable, relied, in substantial part, on the wording of Article 29, Section 7, of the parties' agreement. However, the record clearly shows that the Activity herein suggested to the Applicant (American Federation of Government Employees, Local 2284, AFL-CIO) that it would accept a grievance filed under Article 29, Section 7 (a fact the Acting Regional Administrator was not made aware of), but felt the matter not grievable under Article 2, the article under which the Applicant was filing. The Applicant, however, indicated that it chose to file under Article 2 only, and I cannot agree that the instant matter is grievable under the provisions of that article. In this regard, the Federal Labor Relations Council has recently held that: "Section 12(a) constitutes an obligation in the administration of labor agreements to comply with the legal and regulatory requirements cited therein and is not an extension of the negotiated grievance procedure to include grievances over all such requirements." Department of the Air Force, Scott Air Force Base, FLRC No. 75A-101. Under these circumstances, I find that the mere inclusion of the exact words of Section 12(a) of the Order in Article 2 of the parties' negotiated agreement, without evidence to show that the parties meant thereby to do more than fulfill what was required by the Order, is not sufficient to serve as a basis of a grievance under the negotiated agreement.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability, is granted, and the application herein is hereby dismissed.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
KANSAS CITY REGION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, LYNDON B. JOHNSON SPACE CENTER, HOUSTON, TEXAS Activity/Party to Agreement and LOCAL 2284, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO 1/ Applicant	Case No. 63-6138(GA)

REPORT AND FINDINGS ON GRIEVABILITY

Upon an Application for Decision on Grievability duly filed under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of the matter has been conducted by the Dallas Area Administrator. Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

On October 6, 1975, the American Federation of Government Employees (AFGE), AFL-CIO, filed an Application for Decision on Grievability of a grievance filed under the negotiated grievance procedure of an existing agreement. 2/ The grievance alleged that the National Aeronautics and Space Administration (NASA), Lyndon B. Johnson Space Center, Houston, Texas, denied Ms. Verbly Lee Balinas special consideration for repromotion as provided for in the Federal Personnel Manual (FPM) and the NASA Merit Promotion Plan.

The Applicant and the Activity are parties to a negotiated agreement effective July 10, 1975, for a period of three years, covering units of "(a) All nonsupervisory Wage Grade employees; (b) All nonsupervisory, nonprofessional Classification Act employees located in Houston, Texas, except the Wood and Plastic Model Makers; and (c) All nonsupervisory, professional Classification Act employees located in Houston, Texas."

On July 15, 1975, Ms. Verbly Lee Balinas filed an informal grievance with her immediate supervisor, L. G. Williams, alleging that the Activity violated Article 2 of the parties' agreement, by its failure to afford her special con-

1/ Hereinafter also referred to as the Union.

2/ On November 3, 1975, the American Federation of Government Employees filed a Motion to Amend its original Application to show that said Application was filed by the National Headquarters of the AFGE on behalf of AFGE Local 2284.

Enclosure #1

tion Plan. By Memorandum of July 21, 1975, Personnel Officer Jack R. Lister advised the grievant that he had reviewed the grievance and found no violation of laws, regulations or policies. On July 28, 1975, Ms. Balimas filed the grievance under the second step of the negotiated grievance procedure with Program Manager Glynn S. Lunney who referred the matter to the Activity's Deputy Director Sigurd A. Sjoberg. By letter of August 6, 1975, Mr. Sjoberg rejected the grievance on the basis that it did not come within the scope of the negotiated grievance procedure and designated such decision as a final rejection of the grievance.

The provisions of the collective bargaining agreement cited by the Applicant, Article 2 and Article 5, Section 1, are as follows:

ARTICLE 2

RESTRICTIONS OF LAW, REGULATIONS, AND EXECUTIVE ORDER 11491, AS AMENDED

It is agreed and understood by the EMPLOYER and the UNION that, in the administration of all matters covered by this Agreement, officials and employees are governed by existing or future laws and regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published NASA policies and regulations in existence at the time the Agreement was approved; and by subsequently published NASA policies and regulations required by law or by the regulation of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level.

ARTICLE 5

RIGHTS OF EMPLOYER

Section 1. The Management officials of the EMPLOYER retain the right to manage and direct the activities of the Center in accordance with applicable laws and regulations. This shall include, but not be limited to, the rights to: a) direct employees; b) hire, promote, transfer, assign, and retain employees in positions within the Center; c) suspend, demote, discharge or take other disciplinary action against employees; d) relieve employees from duties because of lack of work or for other legitimate reasons; e) maintain the efficiency of the Government operations entrusted to the Center; f) determine the methods, means, and personnel by which such operations are to be conducted; and g) take any actions necessary in situtations of emergency to carry out the mission of the Center.

The Activity's position is that the provisions of Article 2 are required by Section 12 of the Order to be incorporated in all negotiated agreements and, therefore, were not negotiated bilaterally by the parties. The Activity views the provisions of Article 2 as an affirmation of the intent of the parties to comply with pertinent laws and regulations as they relate to other matters covered by the agreement. It concludes that notwithstanding the reference in Article 2 of the negotiated agreement to, "...existing..regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published NASA policies and regulations...," Article 2 may not be used as a basis for the filing of a grievance over the interpretation or application of promotion procedures contained in the FPM or the NASA Merit Promotion Plan. In this regard, it is argued that Article 51, Grievance Procedure, was negotiated prior to the effective date of Executive Order 11838. 3/ The Activity does concede, however, that Article 2 might well be used as an appropriate reference if it relates to a question on some substantative provision of the agreement.

The position of the Applicant is that the grievance clearly comes within the purview of the negotiated grievance procedure. The Union contends that Article 2 and Article 5, Section 1, are a part of the contract and must be considered together with the other provisions of the agreement. It asserts further that the fact that Section 12(a) and (b) of the Order require the inclusion of language such as that contained in Article 2 and Article 5, Section 1 of the agreement does not make such inclusion any less a part of the contract. It is argued that the position advanced by the Activity is in fact an attempt to limit unilaterally the scope of the negotiated grievance and arbitration procedure, and that such limitation should be properly done through the collective bargaining process.

In agreement with the Applicant, it is my view that Article 2 of the parties' agreement covers the matter which is the subject of the grievance. I am not persuaded by the argument of the Activity that because the inclusion of such language is mandated by the Order it may not therefore be used as the basis for the filing of a grievance. Had the parties wished to exclude questions arising over the interpretation or application of agency policies or regulations from the negotiated grievance procedure, they were free to do so. I find no language in the parties' agreement wherein the right to raise such questions in the grievance procedure is specifically or clearly waived. I also find without merit the argument of the Activity that as Article 51 was negotiated before the effective date of Executive Order 11838, Section 13 of the Order as it formerly read should be controlling. The subject agreement was signed by the parties on June 3, 1975, approximately four months after the President signed Executive Order 11838 and one month after its' effective date. In the absence of any specific language to the contrary, I find that the Order in effect as of May 7, 1975, to be controlling at all times material herein.

Moreover, in reviewing the parties' negotiated agreement I find certain language, not cited specifically by the parties, to be relevant to the question raised in the Application. That language is contained in Section 7 of Article 29, Reduction in Force, and in pertinent part reads:

3/ Executive Order 11838 was signed by the President on February 6, 1975, and became effective on May 7, 1975. Prior to that time, Section 13 of the Order required that a negotiated grievance procedure be limited to grievances over the interpretation or application of the agreement. Section 13 of the Order, as amended by Executive Order 11838, provides that the coverage and scope of the grievance procedure shall be negotiated by the parties so long as it does not otherwise conflict with statute or the Order.

An employee demoted in NASA in a reduction in force will be given special consideration for repromotion to any vacancy for which he is qualified and in the area of consideration at his former grade (or any intervening grade) before any attempt is made to fill the position by other means.

In my view, under the circumstances herein, the Union's failure to allege specifically in its grievance that the conduct in question was violative of Article 29, Section 7 of the agreement does not render the grievance non-grievable with respect to that provision. It is noted that although the grievance did not allege a specific violation of Article 29, Section 7, the wording of the grievance was broad enough and sufficiently clear to encompass such provision.

Having considered carefully the Application, the position of the parties, the negotiated agreement and all that which is set forth above, it is my view that the grievance, i.e.; denial of proper consideration for repromotion subsequent to a Reduction-in-Force, raises a question over the interpretation or application of the FPM and the NASA Merit Promotion Plan. I therefore conclude that the matter raised in the grievance is one covered under Article 2 of the parties' negotiated agreement. Further, I conclude that the matter raised is one covered under Article 29, Section 7 of that agreement. Accordingly, I find that the grievance is on a matter subject to the grievance procedure contained in the parties' existing agreement.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as on the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business May 5, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review is not filed, the parties shall notify the Regional Administrator for Labor-Management Services, U. S. Department of Labor, in writing, at the address shown below, within 20 days of this decision as to what steps have been taken to comply herewith.

Dated at Kansas City, Missouri, this 14th day of April 1976.

THOMAS R. STOVER
Acting Regional Administrator
U. S. Department of Labor
Labor-Management Services Administration
2200 Federal Office Building
911 Walnut Street
Kansas City, Missouri 64106

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

9-8-76

768

Mr. Joseph Girlando
National Representative
American Federation of
Government Employees, AFL-CIO
300 Main Street
Orange, New Jersey 07050

Re: Federal Aviation Administration
National Aviation Facilities
Experimental Center
Atlantic City, New Jersey
Case Nos. 32-3985(RO) and 32-4008(RO)

Dear Mr. Girlando:

I have considered carefully your request for review which, in effect, seeks an advisory opinion on a question of procedural policy in the above-named cases.

In agreement with the Regional Administrator's Report and Findings on Objections, and based on the reasoning therein, I find that further proceedings in this matter are unwarranted. In this regard, it was noted particularly that the ballots in question were found not to be determinative of the election results, and it is clear that you do not wish to have any portion of the instant election set aside.

Accordingly, and noting also that the Assistant Secretary will not render advisory opinions (see attached Report on a Decision No. 15), your request for review in this matter is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

Federal Aviation Administration
National Aviation Facilities Experimental Center
Atlantic City, New Jersey 08405

Activity

and

American Federation of Government Employees
AFL-CIO
Local Union 2335

Petitioner

and

National Federation of Federal Employees (IND)
Local Union 1340

Cross-Petitioner & Intervenor

CASE NO. 32-3985(EC)

Federal Aviation Administration
National Aviation Facilities Experimental Center
Atlantic City, New Jersey 08405

Activity

and

National Federation of Federal Employees (IND)
Local Union 1340

Petitioner

and

American Federation of Government Employees
AFL-CIO
Local Union 2335

Intervenor

CASE NO. 32-4008(EC)

REPORT AND FINDINGS ON OBJECTIONS

In accordance with the provisions of a Directed Election approved February 20, 1976, an election by secret ballot was conducted under the supervision of the Area Administrator, Newark, New Jersey, on March 23, 1976.

The results of the election, as set forth in each Tally of Ballots in four (4) voting groups, are as follows:

Voting Group (A)

Approximate Number of Eligible Voters	16
Void Ballots	1
Votes cast for Local 1340, NFFE, IND	0
Votes cast for Local 2335, AFGE, AFL-CIO	2
Votes cast against Exclusive Recognition	0
Valid votes counted	2
Challenged Ballots	0
Valid votes counted plus Challenged Ballots	2

Voting Group (B)

Approximate Number of Eligible Voters	127
Void Ballots	0
Votes cast for Local 1340, NFFE, IND	11
Votes cast for Local 2335, AFGE, AFL-CIO	77
Votes against Exclusive Recognition	2
Valid Votes counted	90
Challenged Ballots	0
Valid Votes counted plus Challenged Ballots	90

Voting Group (C)

Approximate Number of Eligible Voters	7
Void Ballots	0
Votes cast for Local 1340, NFFE, IND	1
Votes cast for Local 2335, AFGE, AFL-CIO	2
Votes cast against Exclusive Recognition	0
Valid Votes counted	3
Challenged Ballots	0
Valid Votes counted plus Challenged Ballots	3

Voting Group (D)

Approximate Number of Eligible Voters	429
Void Ballots	3
Votes cast for Local 1340, NFFE, IND	109
Votes cast for Local 2335, AFGE, AFL-CIO	34
Votes cast against Exclusive Recognition	36
Valid Votes counted	179
Challenged Ballots	1
Valid Votes counted plus Challenged Ballots	180

Challenged ballots were not sufficient in number to affect the results of the elections.

Timely objections to the procedural conduct of the election were filed on March 29, 1976 by the American Federation of Government Employees in accordance with 202.20(b) of the Assistant Secretary's Regulations. The objections are attached hereto as Appendix A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Administrator has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to the objection involved herein:

The Objection

AFGE Local 2335, hereinafter referred to as the objector, alleges that during the count of the mail ballots the compliance officer opened all outer envelopes and found some thirty-two (32) envelopes which did not contain ballots within envelopes marked "Secret". 1/ Rather, the ballots had simply been placed within the outer envelope only, that is, the envelope which contained the voters identifying information. As each of these envelopes was detected, the compliance officer placed the word "Void" on it. AFGE says that after all ballots were sorted according to voting group, the parties reached an accord not to count the ballots in the "VOIDED" envelopes. Subsequently the objection continues, the compliance officer left the counting area to obtain instructions on how to handle the "VOID" ballots. Upon his return, the compliance officer advised all parties that he had been instructed to count the "VOID" ballots. The objector says that it asked if the decision to count the "VOID" ballots had been based upon the number of "VOID" ballots. This inquiry was met with an affirmative response. Objector states that it challenged these ballots on the ground that the ballots had not been cast in accordance with previously agreed upon procedure. Further, the ballots were cast in such a manner that the secrecy of the voter's choice was destroyed.

Objector argues that the decision to count the void ballots was premature and should have been made only after it could be determined that they would have affected the outcome of the election. Objector concedes that the contested ballots would not have affected the outcome of the elections. However, the Objector says its representative, JOSEPH GIRLANDO, saw how several voters cast their ballots and the decision to count the previously "Voided" ballots raises a substantial question of interpretation and policy.

The objection is limited entirely to decisions and activities of the Labor Management Services Administration representatives present at the election.

1/ The entire election was by mail ballot.

Information from the Newark Area Office disclosed that three (3) compliance officers were present for the ballot count and handled the mechanics of preparing the ballots for counting. Observers from each interested party were also present. Mr. GIRLANDO was not present during the initial phases of the count which consisted of the following:

(1) Checking off the names of voters, as read from returned ballot envelopes, from the master eligibility list, and

(2) Removing the secret ballot envelope from the returned outer envelope and placing it in a pile for specific voting groups.

During the initial phases noted above, the supervising compliance officer noted that some thirty-four (34) voter envelopes contained ballots which were not in a secret ballot envelope. He placed these envelopes off to one side and he noted on the front of each "VOID-DOL". The names of these voters were not initially checked off the master eligibility list. Due to the volume of such voided ballots, a discussion followed among the compliance officers and the observers as to how to deal with these ballots. The Area Office states that since there was a lack of unanimity the compliance officer sought advice from a higher authority. The compliance officer was directed by his superiors to count the subject ballots only if their secrecy could be properly maintained. The compliance officer followed this directive.

The names were checked off on the eligibility roster and the envelopes containing the ballots were placed in front of their respective ballot boxes. Next the envelopes in front of each box were placed face down and shuffled to alter the order. Without lifting the envelopes off the table, the ballots were removed and placed in their respective ballot boxes.

The issue raised by the objection does not concern the balloting process itself. In this respect, I note that neither the objections nor the investigation has disclosed any evidence which would form a basis to conclude that there was interfence with the voter's right to cast a secret ballot free from restraint and coercion. The objection is solely concerned with the fact that a voter's choice may (emphasis underscored) have been disclosed during the sorting process in preparation for the tally of the ballots.

It is undisputed that such ballots despite the number were not determinative of the election results in any of the voting groups. No evidence has been adduced nor has the investigation disclosed any evidence which would form a basis to conclude that a choice on any particular ballot could be identified with any particular voter. Based upon the foregoing, I conclude that no improper conduct occurred which may have affected the results of the election. Accordingly, the objection is found to have no merit.

My decision should not be construed as condoning any action by any party which would fail to preserve the secrecy of the ballot. However, given the practical considerations involved in the tallying process, there may be occasions when a breach of secrecy may occur; however, such conduct, standing alone, would not be sufficient to void an entire election unless the void identifiable individual ballots affected the results of the election. In the instant case, I am satisfied that the procedure utilized was sufficient to preserve the secrecy of the ballot.

Having found that no objectionable conduct occurred improperly affecting the results of the election, I am advising the parties that a certification on behalf of the American Federation of Government Employees for voting groups "a", "b", and "c" and on behalf of the National Federation of Federal Employees for voting group "d", will be issued by the Area Administrator, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Att: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business May 24, 1976.

DATED: May 7, 1976

Benjamin B. Naumoff
Regional Administrator
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

9-9-76

Mark D. Roth, Esq.
Staff Counsel
American Federation of
Government Employees, AFL-CIO
1325 Massachusetts Ave., N.W.
Washington, D.C. 20005

769

Re: Federal Aviation Administration
Eastern Region
Case No. 30-5781(RO)

Dear Mr. Roth:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of certain objections to the election in the above-named case.

In agreement with the Regional Administrator, I find that dismissal of the objections in this matter is warranted. Thus, with respect to the only objection made the subject of review in this case (numbered 1), it is undisputed that the flier in question was printed and distributed by Federal Aviation Science and Technological Association, a Division of National Association of Government Employees (FASTA/NAGE) on about March 11, 1976, 12 days prior to the mailing of the ballots, which took place on March 23, 1976. In this period, between the mailing of the flyer and the mailing of the ballots, I find that ample time was available to the American Federation of Government Employees, AFL-CIO (AFGE), not only to be made aware of the flyer, as it was mailed to all eligible employees, but also to refute the alleged misrepresentation contained therein.

Under these circumstances, I concludé, in agreement with the Regional Administrator, that the instant objections are without merit and, accordingly, your request for review is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

FEDERAL AVIATION ADMINISTRATION
Activity

and

FEDERAL AVIATION SCIENCE AND TECHNOLOGICAL ASSOCIATION/NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES
Petitioner

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
Intervenor

and

Case No. 22-5554(RO)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 2760
Intervenor

and

NATIONAL FEDERATION OF FEDERAL EMPLOYEES
Intervenor

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, LOCAL LODGE NO. 2266
Intervenor

and

FEDERAL AVIATION ADMINISTRATION, EASTERN REGION
Activity

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL 3341
Petitioner

and

Case No. 30-5781(RO)

FEDERAL AVIATION SCIENCE AND TECHNOLOGICAL ASSOCIATION/NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES
Intervenor

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the Assistant Secretary's direction of elections in A/SLMR No. 600 and the provisions of an election agreement approved on February 24, 1976, a mail ballot election was conducted under the supervision of the Area Administrator of the Washington Area Office. The ballots were mailed on March 23, 1976 and were counted on April 22 and 23, 1976.

The Assistant Secretary directed that an election be held for nine distinct bargaining units designated as voting groups (a) through (i). With regard to the effect of the vote, the Assistant Secretary stated as follows:

. . . if a majority of the employees in any or all of voting groups (a) (h) does not vote for the labor organization which is either seeking to represent them in a separate unit or is the incumbent exclusive representative, the ballots of the employees in these voting groups will be pooled with those of the employees in voting group(i).

Voting group (i) consisted of all employees of the Airway Facilities Division, located in the regions of the FAA, excluding the employees in the other voting groups, the employees already exclusively represented at the Airway Facilities, and the standard exclusions under Executive Order 11491, as amended, of certain groups of employees.

Timely objections to conduct improperly affecting the results of the election were filed by AFGE Local 2760, an intervenor in case No. 22-5554(RO). AFGE Local 2760 is the incumbent exclusive representative for voting group (b), a unit described as follows:

All Clerk-Stenos, Supply Clerks, and Supply Specialists, assigned to the Albuquerque, N.M. Airway Facilities Sector

The results of the election for voting group (b), as set forth in the Tally of Ballots served on the parties on April 23, 1976 are as follows:

Approximate number of eligible voters	2
Votes cast for FASTA/NAGE	0
Votes cast for AFGE Local 2760	2
Votes against exclusive recognition	0
Void ballots	0
Challenged ballots	0
Valid votes counted	2

AFGE Local 2760 objects to the election on numerous grounds. Each objection, the essential facts relating to the objection which were revealed by the investigation conducted by the Area Administrator, and the positions, if any, of the other parties are set forth below:

1. All interested parties were not given the opportunity to participate in election and pre-election proceedings.

2. All interested parties were not supplied with the information and documents required by the Rules and Regulations of the Assistant Secretary.

The investigation established that AFGE Local 2760 was granted intervention in case no. 22-5554(RO) on December 19, 1974 on the basis of its status as incumbent exclusive representative of the employees in the bargaining unit designated as voting group (b). Thereafter, until the opening of the hearing held in this case, the President of AFGE Local 2760 was served by the Area Administrator or Regional Administrator with copies of all documents served on the other parties to the case. At the hearing (p.9 in the transcript), Mr. Raymond Malloy, Assistant General Counsel for AFGE, stated his appearance on behalf of Local 2760. The Assistant Secretary's decision was served on Mr Malloy as counsel for Local 2760. Thereafter, at the meetings held in Washington,D.C., wherein the parties discussed election arrangements, the six AFGE locals that were parties to the election were represented by the AFGE National Office which apportioned among its locals the five AFGE election observer positions agreed upon by the parties to the election. Accordingly, the request of the President of Local 2760 to send four election observers to the election was referred to the AFGE National Office. As there were only two eligible voters in voting group (b), the request for four observers does not appear to be wholly reasonable.

3. The elections were not conducted within 60 days of the date of the Assistant Secretary's decision in A/SLMR No. 600, as he had directed.

With regard to this objection, the investigation indicates that on January 28, 1976, the Assistant Secretary granted the request of the Acting Assistant Regional Administrator of the Philadelphia Regional Office that a 45-day extension be granted in which to conduct the election.

4. The elections were not conducted by the appropriate Area Directors as ordered by A/SLMR No. 600.

A review of the case reflects that the petition in case no. 22-5554(RO) was filed in the Washington Area Office and the petition in case no. 30-5781(RO) was filed in the New York Area Office. Case No. 30-5781(RO) was consolidated with 22-5554(RO) and transferred to the Washington Area Office for the purpose of conducted a hearing and subsequent election. Part 206.6 of the Assistant Secretary's Regulations provides for such transfer and consolidation of cases. With regard to the conduct of the election, it was administratively determined that the Area Administrator of the Washington Area Office would supervise the election.

5. The effect of the vote as stated on the election notice is different than ordered by the Assistant Secretary in A/SLMR No. 600.

A review of the election notice for voting group (b) does not reflect any substantive difference in the language of the notice and the language of the decision other than the elimination of references to voting groups other than (b).

6. The provisions of Executive Order 11838 have not been incorporated in Department of Transportation/FAA regulations.

7. Documents containing false, misleading, and defamatory information were made available to voters in the FAA's southwest region and possibly elsewhere.

8. The unit designated as voting group (b) should have been excluded from the election because the inclusion of this unit was the result of fraudulent information provided by the FAA.

These objections are not supported by any evidence, and the objecting party has not stated how these matters may have prejudiced the election.

9. The showing of interest obtained prior to July 1974 (original petition date) could not be considered valid at this point in time.

Here, the investigation revealed that after the Assistant Secretary issued his decision, the Washington Area Office re-examined the showing of interest submitted by the Petitioner and Intervenors in case no. 22-5554(RO) and found it to be sufficient, and that the New York Area Office did likewise in case no. 30-5781(RO).

In a subsequent letter the President of AFGE Local 2760 pointed out what he considered to be "additional irregularities" which came to his attention after he had filed his original objections. Briefly, these were that a unit employee in voting group (b) had been disenfranchised; that arrangements for the negotiation of a nationwide agreement between FASTA/NAGE and FAA had begun before the election; and that an FAA management official is trying to determine if there is a conflict in having an employee from one bargaining unit represent employees in a separate bargaining unit. Again, no evidence or specific information was submitted to substantiate the objections, and the objecting party failed to indicate what effect these matters had on the election. Additionally, as the period for filing objections expired on April 30, 1976, and these objections were filed in the Washington Area Office on May 3, 1976, I find that they were not timely filed.

With regard to all of the above objections of AFGE Local 2760, the FASTA/NAGE stated that, "it is difficult for us to respond to this appeal in light of the fact that AFGE, the winner of the election, has challenged the results."

I find with regard to the objections filed by AFGE Local 2760, that the objecting party has failed to establish that the Assistant Secretary or his representatives committed any error that affected the results of the election. Additionally, no evidence was submitted to show that the Activity or any other party to the election engaged in conduct which prejudiced the election. Considered all together, the objections do not provide any reasonable basis for believing that improper conduct occurred which affected the results of the election. In light of this and the fact that the objecting party won the election, I find the objections to be without merit.

Timely objections were also filed by the AFGE National Office on behalf of Local 3341, the Petitioner in case no. 30-5781(RO). Local 3341 was seeking to represent the employees in the following unit, designated as voting group (a):

> All Electronics Technicians and Wage Grade personnel under the Chief, Airway Facilities Division, Eastern Region, employed in Airway Facility Sector Offices (excluding all standard exclusions under Executive Order 11491, as amended, and clerical employees, supply employees, and computer operators).

The results of the election in voting group (a), as set forth in the Tally of Ballots served on the parties on April 23, 1976, are as follows:

Approximate number of eligible voters	1,046
Votes cast for FASTA/NAGE	463
Votes cast for AFGE Local 3341	216
Votes against exclusive recognition	83
Void ballots	12
Challenged ballots	1
Valid votes counted	763

AFGE Local 3341 objects to the election on the grounds that misrepresentations in FASTA/NAGE campaign literature improperly affected the results of the election. These alleged misrepresentations were contained in two FASTA/NAGE flyers.

The first flyer was addressed to, "Dear Airway Facility Employee" and was signed by the National Vice-President of FASTA. Excerpted below is the portion to which AFGE Local 3341 objects:

> In an unprecedented endorsement, delivered to FASTA headquarters, Gale B. Fisher, AFGE President of Airway Facilities Section 28400 in Huntsville, Alabama wrote:
>
> "We employees of Airway Facility Sector 28400, Huntsville, Alabama, although represented by the American Federation of Government Employees (AFGE), have decided unanimously to support and vote for FASTA in the upcoming election. . ."

According to AFGE, Mr. Gale Fisher is not, and never was a president of an AFGE Local, and he has never been elected or appointed to a position with AFGE. AFGE maintains that it became aware of the flyer on March 23, 1976.

The FASTA/NAGE position is that, after receiving a letter of endorsement from Mr. Fisher, the flyer was printed which "inadvertently" identified Mr. Fisher as the president of an AFGE local. FASTA/NAGE states that AFGE had an opportunity to respond to the flyer, and did, in fact, distribute a "verbose" flyer in response to the FASTA/NAGE flyer.

The Activity submitted that it was unaware of the FASTA/NAGE flyer.

The investigation of the objection indicated that the FASTA/NAGE flyer was printed and distributed on or about March 11, 1976. On or about March 26, 1976, the AFGE printed and distributed a flyer which made reference to the FASTA/NAGE flyer and characterized it as a misrepresentation.

Precedent decisions of the Assistant Secretary have stated that an election should be set aside only where a party has grossly misrepresented a material issue in the election, the truth of which the employees are not in a position to judge, and to which the other party does not have time to respond.1/

In the instant case, the fact that Mr. Fisher was characterized as president of an AFGE local is critical in two respects. Firstly, local employees would be more likely to recognize this as a misrepresentation than if he had been identified as a national official of the AFGE. Secondly, the influence of the president of an AFGE local supporting the opposition would not be as strong as the effect of an AFGE national officer defecting to the opposition.

1/ Army Materiel Command, Army Tank Automotive Command, Warren, Michigan, A/SLMR No. 56, and Navy Air Rework Facility, Naval Air Station, Jacksonville, Florida, A/SLMR No. 613.

Additionally, as the AFGE response was printed and distributed only three days after the ballots were mailed and well in advance of the April 22, 1976 deadline for the return of ballots, it is highly likely that most of the employees received the AFGE disclaimer before they returned their ballots. Under the circumstances, I am of the opinion that AFGE had ample opportunity to and did, in fact, refute the statement made in the FASTA/NAGE flyer. Accordingly, I conclude that the objection is without merit.

The second FASTA/NAGE flyer to which AFGE objects contained the statement that "AFGE has never produced one single accomplishment in behalf of any Airway Facility Employee or group of employees. . . Nor have they handled or do they have anyone available to handle a grievance properly."

In response to the flyer, AFGE maintains that it has handled many grievances and represented FAA Eastern Region employees.

The Activity position is that it was unaware of the FASTA/NAGE flyer.

The investigation revealed that the flyer was distributed on or about February 26, 1976.

I find that the FASTA/NAGE claim is the type of self-serving campaign rhetoric or "puffing" which employees are able to evaluate for themselves and which does not justify setting aside an election. Also, AFGE had ample time to respond to the FASTA/NAGE flyer. For these reasons, I find that the second objection of AFGE Local 3341 has no merit.

Having found that no objectionable conduct took place which improperly affected the results of the elections, the parties are advised that, absent the timely filing of a request for review, the Area Administrator will certify the results of the elections.

Pursuant to Section 202.6(d) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this decision by filing a request for review with the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of such a request must be served on me as well as the other parties. A statement of such service should accompany the request for review. A request must set forth all facts and reasons on which it is based and must be received by the Assistant Secretary by the close of business July 15, 1976.

Dated: June 30, 1976

Kenneth L. Evans

Kenneth L. Evans,Regional Administrator
for Labor-Management Services

Attachment: Service Sheet

Mr. Gerald Tobin
Staff Attorney
National Federation of
Federal Employees
1016 16th Street, N.W.
Washington, D.C. 20036

Re: Department of the Interior
Geological Survey, Water
Resources Division
Austin, Texas
Case No. 63-6126(CA)

Dear Mr. Tobin:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET - ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

May 14, 1976

In reply refer to: 63-6126(CA)
Interior/Geological Survey,
Water Resources Division,
Austin, TX/NFFE, Ind.

Mr. Charles D. Stephens
National Vice President
Region 4, National Federation
of Federal Employees
2206 Coors Drive
North Little Rock, Arkansas 72118

Certified Mail #341248

Dear Mr. Stephens:

The above-captioned case alleging a violation of Section 19(a)(1)&(2) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as, e.g., a reasonable basis for the complaint has not been established, since you have not sustained the burden of proof regarding matters alleged in the complaint, in accordance with Section 203.6(e) of the Rules and Regulations of the Assistant Secretary.

In substance, you have charged that Mr. Winslow attacked you verbally in the presence of Ms. Mary Christianson, President of Local 516, and Ms. Carolyn A. Puschell, NFFE National Representative, accusing you of violating the current collective bargaining agreement between Local 516 and the Activity (1) by failing to report to his office before contacting Ms. Christianson, and (2) by failing to secure the permission of Ms. Christianson's supervisor before coming to his office.

In my view, the evidence submitted in support of your charges does not establish that the action of Mr. A. G. Winslow, Associate District Chief, Water Resources Division, U. S. Geological Survey, and his statements to you as National Vice President, Region IV, National Federation of Federal Employees:

(1) interfered with, restrained, or coerced an employee in the exercise of the rights assured by the Order; or

(2) encouraged or discouraged membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Labor-Management Services Administration, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business June 1, 1976.

Sincerely yours,

Gordon E. Brewer

GORDON E. BREWER
Acting Regional Administrator
for Labor-Management Services

cc: Oscar E. Masters, Area Administrator
U. S. Department of Labor
Labor-Management Services Administration
555 Griffin Square Building, Room 707
Griffin and Young Streets
Dallas, Texas 75202

Mr. A. G. Winslow, Associate District Chief
Water Resources Division, U. S. Geological Survey
U. S. Department of the Interior
Federal Building, 300 E. 8th Street
Austin, Texas 78701 Certified Mail #341249

National Federation of Federal Employees
1737 H Street, N.W.
Washington, D.C. 20006 Certified Mail #341250

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
9-9-76

Ms. Joan Greene
2032 Cunningham Drive
Apartment 201
Hampton, Va. 23616

771

Re: Headquarters, United States
Air Force and Headquarters,
Tactical Air Command
Case No. 22-6643(CA)

Dear Ms. Greene:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that further proceedings in this matter are unwarranted. Thus, I agree that the obligations on the part of an Activity to meet and confer and accord appropriate recognition flow to a labor organization which is the exclusive representative, and not to any individual. As the instant complaint was filed by individuals, and not by the exclusive representative, it follows that such individuals have no standing to allege violations of Section 19(a)(5) and (6) of the Order. Moreover, no evidence has been submitted to support a reasonable basis for the Section 19(a)(1) and (2) allegations of the complaint.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

14120 GATEWAY BUILDING
3535 MARKET STREET

May 11, 1976

TELEPHONE 215-597-1134

Ms. Joan Greene
2032 Cunningham Drive, Apt. 201
Hampton, Virginia 23666
(Cert. Mail No. 453067)

Re: Headquarters, U.S.Air Force and
Headquarters Tactical Air Command
Case No. 22-6643(CA)

Dear Ms. Greene:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

In the complaint and in a follow-up letter dated February 11, 1976, you requested, pursuant to Section 203.6 of the Rules and Regulations, that the Area Administrator conduct an independent investigation in this matter. The Area Administrator has deemed such investigation unnecessary and has not undertaken it since there has been no showing of sufficient information to warrant further processing of the complaint. I concur in the Area Administrator's determination in this regard.

In your February 11, 1976 letter, you also asked that one of the respondents in this case, namely, Headquarters U.S. Air Force, not be allowed to respond to the complaint because it did not acknowledge, investigate or issue a final decision on the charge. Section 203.4(a) of the Rules and Regulations provides that the respondent(s) shall respond to a complaint that has been made against them. The Area Administrator and Regional Administrator do not have the authority to deny the right of response, except for reasons of timeliness. Your request is therefore denied.

In the complaint, which you filed on behalf of yourself, Ms. Sallie Estell and Ms. Beverly Heck,you object to memoranda issued from Headquarters, Tactical Air Command (TAC) on July 7 and October 8, 1975. The July 7 memorandum advised Hq TAC staff agencies to:

"a. Review their regulatory issuances which apply to subordinate activities to identify provisions which: (1) relate to personnel policies and practices or other matters affecting working conditions of civilian employees, and (2) are essential to effective operations and should remain protected from negotiations at base level.

b. Work directly with their Hq USAF counterparts to determine whether regulatory provisions found to be essential may be incorporated in Air Force or Department of Defense regulations."

The October 8 memorandum advised staff agencies contemplating actions recommended in the earlier memorandum to complete such actions by December 23, 1975, the date set by the Federal Labor Relations Council for implementation of Executive Order 11838's amendments to Section 11(a) and 11(c) of Executive Order 11491, as amended.

Investigation has revealed that the Hq TAC memoranda in question were consistent with and issued pursuant to a Department of the Air Force (USAF) directive to all major commands.

It is the complainants' contention that the July 7 and October 8, 1975 Hq TAC memoranda constitute violations by Hq USAF and Hq TAC of Section 19(a)(1)(2)(5) and (6) of Executive Order 11491, as amended, by having the effect of coercing, interfering with, restraining and discouraging civilian employees of the Air Force and by constituting a failure on the part of the Air Force to accord appropriate recognition to the exclusive representative and a refusal to consult, confer and negotiate with the exclusive representative as required by Executive Order 11491, as amended by Executive Order 11838.

With respect to the alleged violation of Section 19(a)(6) of the Order, the Assistant Secretary has ruled that the obligation to consult, confer or negotiate flows between the labor organization which is the exclusive representative of a unit of employees and the activity that has accorded exclusive recognition to the labor organization.1/

The investigation has revelaed that on June 4, 1974 the NAGE, Local R-4-106 was certified as the exclusive representative of the following two (2) units: (a) all non professional general schedule and wage grade employees serviced by the Central Civilian Personnel Office, Langley AFB, Virginia and (b) all professional general schedule employees serviced by the Central Civilian Personnel Office, Langley AFB, Virginia. The two units

1/ National Aeronautics and Spece Administration (NSAS) Washington,D.C. and Lyndon B. Johnson Space Center (NASA), Houston, Texas, A/SLMR No. 451.

consist primarily of employees of the 4500 Air Base Wing. Both the union and management agree that the level of recognition is at the commander 4500 Air Base Wing.

Since the Hq USAF and Hq TAC are not parties to the exclusive bargaining relationship, they are not proper Respondents with respect to an alleged violation of 19(a)(6) of the Order.

Moreover, the obligation on the part of an activity to consult, confer or negotiate flows to the labor organization which is the exclusive representative and not to any individual. 1/ Since the complaint has not been filed by the exclusive representative but by you on behalf of yourself and two other individuals, I find that the complainants have no standing to allege a violation of 19(a)(6) of the Order.

Section 19(a)(2) of the Order states that Agency management shall not "encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment" (emphasis added). You have presented to evidence which indicates that any such discrimination has occurred.

Section 19(a)(5) of the Order has been construed by the Assistant Secretary to refer "to matters related to the according of appropriate recognition rather than to the conduct of the bargaining relationship." 3/ Neither the memoranda that are the focus of the complaint, nor any other evidence disclosed by the investigation suggest any failure on the part of Hq USAF, Hq TAC or any subordinate activity of Hq TAC to accord appropriate recognition to any labor organization.

Your allegation that the July 7 and October 8, 1975 memoranda coerced, interfered with, and restrained civilian employees of the Air Force in violation of Section 19(a)(1) of the Order similarly has not been supported by any evidence which establishes any nexus between issuance of the memoranda and union activity on the part of the complainants.

In addition to the above determinations, I find that the violations of Section 19(a)(1),(2) and (5) alleged in your complaint are all premised upon the alleged violation of Section 19(a)(6) and not upon any action independent of the actions constituting the alleged 19(a)(6) violation.

Based on the foregoing reasons, I find that you have not established a reasonable basis that a 19(a)(1), (2), (5) and (6) violation has occurred. I am, therefore, dismissing the complaint in its entirety.

2/ U.S. Department of Agriculture, Forest Service,Regional Office, Juneau, Alaska, A/SLMR No. 595.
3/ United States Army School Training Center, Fort McClellan, Alabama, A/SLMR No. 42.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. 20216 not later than close of business May 26, 1976.

Sincerely,

Frank P. Willette

Frank P. Willette
Acting Regional Administrator
for Labor-Management Relations

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
9-9-76

772

Mr. Gary W. Eads
President, Professional Air
Traffic Controllers Organization
Local #304, AFL-CIO Affiliate
RR #2 Box 62A
Springhill, Kansas 66083

Re: Federal Aviation Administration
Olathe, Kansas
Case No. 60-4545(CA)

Dear Mr. Eads:

I have considered carefully your request for review seeking reversal of the Regional Adminstrator's dismissal of the subject complaint, which alleges violations of Section 19(a)(1), (2), and (5) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

May 21, 1976

Mr. Gary W. Eads, President
RR#2, Box 62A
Springhill, Kansas 66083

In Reply Refer To:
60-4545(CA)
FEDERAL AVIATION ADMINISTRATION
OLATHE, KANSAS

Dear Mr. Eads:

The Complaint in the above-captioned case was filed on February 3, 1976, in the office of the Kansas City Area Administrator and alleges violations of Section 19(a)(1)(2) and (5) of Executive Order 11491, as amended. The complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the complaint has not been established, and I shall therefore dismiss the complaint in this case.

It is alleged that the Respondent by its representative, Ralph Brockman, Chief of the Activity, violated Section 19(a)(1) and (2) of the Order while in attendance at a meeting of its Facility Air Traffic Technical Advisory Committee (FATTAC) accusing those present of conducting meetings of the Professional Air Traffic Controllers Organization (PATCO). It is further alleged that Brockman, at the meeting, made it clear that he was aware that a majority of the members of FATTAC were also members of PATCO, and that by the above action, Brockman discouraged membership in the Union by "attempting to show union involvement in areas beyond its purview." The Complainant alleges further that Section 19(a)(5) of the Order was violated in that the remarks uttered by Brockman at the subject meeting were made without prior consultation with the Union, and therefore, Brockman refused to accord appropriate recognition to the Union.

Additionally, the Complainant alleges another violation, apparently of Section 19(a)(1) of the Order, committed by Brockman when he responded, in writing, to a question posed by the Complainant's President, Gary Eads. The letter from Brockman to Eads reads in pertinent part:

> "2. Do you feel that being a member of PATCO will have any bearing on how a FATTAC member conducts FATTAC business?
>
> Yes, I believe it could have a bearing."

I shall treat each of the above-described allegations separately.

With regard to the allegations of violations of Section 19(a)(1) of the Order, evidence submitted by the parties indicates that FATTAC is a committee established by the agency, composed of employees in the PATCO bargaining unit who meet once a month for the purpose of discussing various aspects of the activity operation and report thereafter to Management. It appears that, as a result of receiving misinformation as to what transpired at the September 1975 FATTAC meeting,1/ Brockman attended the October 28, 1975 meeting and asked the acting chairman if PATCO membership was discussed during FATTAC meetings, and that after being assured that it was not, and responding to questions from FATTAC members,2/ Brockman left the meeting. No evidence was presented to establish that Brockman's reason for attending the October FATTAC meeting was for any other reason than that described above.

In my view, the evidence submitted by the Complainant does not support a finding that Brockman's attendance at the subject meeting was for any improper or unlawful purpose. Rather, it appears that upon receiving information albeit perhaps, of no more than of a hearsay nature, Brockman, to assure that FATTAC was concerned only with matters pertinent to its mission, visited the October meeting and questioned the acting chairman on this point.3/ Thereafter, upon being assured that PATCO business was not discussed at prior FATTAC meetings, Brockman, in all likelihood, would have left the meeting, but for questions from FATTAC members. In such circumstances, I conclude that Brockman, as the chief of the facility, had the right, and indeed, the obligation, to insure that the time expended by employees of the facility at the FATTAC meeting, was directed to FATTAC business, and not PATCO business. Accordingly, I find that the evidence does not support the allegation and will therefore dismiss this allegation of violation of Section 19(a)(1) of the Order.

As to the allegation of violation of Section 19(a)(2) of the Order, that section forbids agency management to encourage or discourage membership in a labor organization by discriminating in regard to hiring, tenure, promotion, or other condition of employment. No evidence was submitted to indicate that Activity herein engaged in such conduct. Accordingly, no merit is found to this allegation.

With regard to the allegation of violation of Section 19(a)(5) of the Order based upon Brockman's alleged failure to consult with the union regarding the purpose of his attendance and role at the October meeting, and therefore refusing to accord appropriate recognition to the Union, it appears that the Complainant intended to allege violations of Section 19(a)(6) rather than Section 19(a)(5). Thus, Section 19(a)(5) of the Order requires an agency to accord recognition to a labor organization once that labor organization is

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1/ This information was, according to Brockman, received from a Regional Office Evaluator, who advised Brockman, prior to the October 28, 1975 meeting, that the acting chairman of FATTAC had noted to the evaluator, that 11 of the 12 members of FATTAC were PATCO members, and the remaining member was sympathetic of PATCO.

2/ There is no allegation that any response to such question constitutes violations of the Order.

3/ The same individual alleged to have made the remarks to the evaluator relating to the FATTAC composition and/or PATCO sympathies of its members.

entitled to such recognition. There is no evidence herein that the agency has refused to recognize PATCO as the labor organization representing certain of its employees. Section 19(a)(6) of the Order, however, requires that agency management consult, confer or negotiate with the appropriate labor organization. Further, Section 11(a) requires that such conferring, consulting or negotiations shall be accomplished (in good faith) with respect to personnel policies and practices and matters affecting working conditions. Based upon evidence presented by the parties, I find no evidence of a refusal by the agency to accord recognition to a labor organization as required in Section 19(a)(5). Further, I find that the evidence fails to establish that the agency was required to consult, confer or negotiate with a PATCO representative before attending the FATTAC meeting inasmuch as such conduct by the Activity is not of a nature that would fall within the purview of Section 19(a)(6) of the Order. Accordingly, I conclude that this allegation is without merit and therefore the complaint in this regard shall be dismissed.

Finally, the Complainant alleges that the Activity's response to the specific question as follows:

> "2. Do you feel that being a member of PATCO will have any bearing on how a FATTAC member conducts FATTAC business?
>
> Yes, I believe it could have a bearing,"

violates the Executive Order, assumedly Section 19(a)(1).

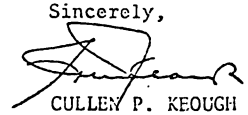
An examination of the documents submitted by the parties discloses that the subject exchange of questions and answers was made during the period of time provided for in the Assistant Secretary's Regulations (following the filing of the pre-complaint charge on November 11, 1975) for the purpose of attempting to settle the charge. Brockman's response to questions submitted to him by Eads, dated December 24, 1975, was of course, never raised in the pre-complaint charge since it occurred subsequent to its filing. The first time this allegation was ever raised was in the filing of the Complaint. In my view, the wording of Section 203.2(a) of the Assistant Secretary's Rules and Regulations is clear and unequivocal; a pre-complaint charge must be filed in writing with the party to whom the charge is directed before the filing of a complaint. I, therefore, need not consider the merits of this allegation as it is procedurally defective and must be dismissed accordingly.

In view of all of the foregoing, I further conclude that the Complainant has failed to sustain the burden of proof as required in Section 203.6(e) of the Regulations, and therefore, I shall dismiss the Complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, Washington, D.C. 20216, not later than close of business June 7, 1976.

Sincerely,



CULLEN P. KEOUGH
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
9-10-76

Mr. Jerry L. Rowe 773
Route 9
Maryville, Tennessee 37801

Re: Tennessee National Guard
Case No. 41-4678(CA)

Dear Mr. Rowe:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in this matter are unwarranted. Thus, there is no evidence that the Activity has interfered with your right to join the National Association of Government Employees (NAGE) or that it would have denied you dues withholding if the NAGE had properly submitted such a request in accordance with the terms of Article XIX of the current negotiated agreement.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

May 18, 1976 ATLANTA, GEORGIA 30309

Mr. Jerry L. Rowe
Route 9
Maryville, Tennessee 37801

Re: Tennessee National Guard
Case No. 41-4678(CA)

Dear Mr. Rowe:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted. Investigation discloses that State Council R5-165, National Association of Government Employees, hereinafter referred to as State Council NAGE, was certified on February 2, 1973, for a unit of all employees of the Tennessee National Guard excluding professional employees and the usual mandatory exclusions. State Council NAGE includes four locals one of which is Local R5-147 which represents employees of the 134th Air Refueling Group. That Group is part of the Tennessee National Guard. At all times material herein, you were assigned to the 134th Group.

You allege that Respondent refused you "membership in the bargaining unit" on the grounds that Respondent considered you to be a supervisor. You state that inasmuch as you exercised no supervisory authority, that you are not a supervisor and therefore Respondent's refusal to deduct union dues constitutes interference with your rights guaranteed by the Order.

Respondent asserts that although you were detailed to a non-supervisory position, you still possess authority of a supervisor. Therefore, according to Respondent, Respondent is precluded both by the labor agreement and by the Executive Order from withholding dues from your pay.

In order to determine whether or not there is a reasonable basis for complaint, it is not necessary to determine whether or not you were a supervisor within the meaning of Section 2(c) of the Order at the time Respondent declined to honor your request to withhold union dues from your pay. Therefore, I shall make no finding as to whether or not you were a supervisor within the meaning of Section 2(c) of the Order.

State Council NAGE, who was notified of the complaint and who was made a party by the Area Administrator, takes no position with respect to whether or not there has been a violation of the Executive Order.

Investigation has failed to disclose nor have you alleged that Respondent prohibited you from making application for membership in State Council NAGE or any of the component locals. Although Respondent declined to process a dues withholding authorization form, it did not interfere with your right, either as a supervisor or as a non-supervisor, to join State Council NAGE or any other labor organization. The right to form, join or assist a labor organization and to refrain from such activity is a right assured to all employees of the executive branch of the Federal Government. Respondent has not interfered with your right to form, join or assist State Council NAGE; its refusal to process your request to withhold dues may have effectively excluded your inclusion in the bargaining unit but your "right" to be included in that unit is a collective right, not an individual right.

The certified exclusive representative has not, through the filing of an unfair labor practice alleged that Respondent has unilaterally excluded you from inclusion in the bargaining unit. If Respondent has denied you or any other employee inclusion in the bargaining unit, which is a collective right rather than an individual right, a request for a determination and ultimate resolution of such a violation must be made by the exclusive representative, not by an individual employee. Only a labor organization may file an unfair labor practice alleging violation of Section 19(a)(5) or (6). I find, therefore, there is no reasonable basis for a Section 19(a)(1) violation.

With respect to the allegation that Respondent has violated Section 19(a)(2), no evidence has been adduced that Respondent has discouraged or encouraged membership in any labor organization by discriminating against you or any other employee in regard to tenure, promotion or other condition of employment.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business June 2, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services

Mr. Jerry L. Rowe
Route 9
Maryville, Tennessee 37801

Re: Tennessee National Guard
Case No. 41-4678(CA)

Dear Mr. Rowe:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in this matter are unwarranted. Thus, there is no evidence that the Activity has interfered with your right to join the National Association of Government Employees (NAGE) or that it would have denied you dues withholding if the NAGE had properly submitted such a request in accordance with the terms of Article XIX of the current negotiated agreement.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

May 18, 1976

Mr. Jerry L. Rowe
Route 9
Maryville, Tennessee 37801

Re: Tennessee National Guard
Case No. 41-4678(CA)

Dear Mr. Rowe:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted. Investigation discloses that State Council R5-165, National Association of Government Employees, hereinafter referred to as State Council NAGE, was certified on February 2, 1973, for a unit of all employees of the Tennessee National Guard excluding professional employees and the usual mandatory exclusions. State Council NAGE includes four locals one of which is Local R5-147 which represents employees of the 134th Air Refueling Group. That Group is part of the Tennessee National Guard. At all times material herein, you were assigned to the 134th Group.

You allege that Respondent refused you "membership in the bargaining unit" on the grounds that Respondent considered you to be a supervisor. You state that inasmuch as you exercised no supervisory authority, that you are not a supervisor and therefore Respondent's refusal to deduct union dues constitutes interference with your rights guaranteed by the Order.

Respondent asserts that although you were detailed to a non-supervisory position, you still possess authority of a supervisor. Therefore, according to Respondent, Respondent is precluded both by the labor agreement and by the Executive Order from withholding dues from your pay.

In order to determine whether or not there is a reasonable basis for complaint, it is not necessary to determine whether or not you were a supervisor within the meaning of Section 2(c) of the Order at the time Respondent declined to honor your request to withhold union dues from your pay. Therefore, I shall make no finding as to whether or not you were a supervisor within the meaning of Section 2(c) of the Order.

State Council NAGE, who was notified of the complaint and who was made a party by the Area Administrator, takes no position with respect to whether or not there has been a violation of the Executive Order.

Investigation has failed to disclose nor have you alleged that Respondent prohibited you from making application for membership in State Council NAGE or any of the component locals. Although Respondent declined to process a dues withholding authorization form, it did not interfere with your right, either as a supervisor or as a non-supervisor, to join State Council NAGE or any other labor organization. The right to form, join or assist a labor organization and to refrain from such activity is a right assured to all employees of the executive branch of the Federal Government. Respondent has not interfered with your right to form, join or assist State Council NAGE; its refusal to process your request to withhold dues may have effectively excluded your inclusion in the bargaining unit but your "right" to be included in that unit is a collective right, not an individual right.

The certified exclusive representative has not, through the filing of an unfair labor practice alleged that Respondent has unilaterally excluded you from inclusion in the bargaining unit. If Respondent has denied you or any other employee inclusion in the bargaining unit, which is a collective right rather than an individual right, a request for a determination and ultimate resolution of such a violation must be made by the exclusive representative, not by an individual employee. Only a labor organization may file an unfair labor practice alleging violation of Section 19(a)(5) or (6). I find, therefore, there is no reasonable basis for a Section 19(a)(1) violation.

With respect to the allegation that Respondent has violated Section 19(a)(2), no evidence has been adduced that Respondent has discouraged or encouraged membership in any labor organization by discriminating against you or any other employee in regard to tenure, promotion or other condition of employment.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business June 2, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-10-76

774

Mr. Mark Tremayne
7413 Bradley Drive
Buena Park, California 90620

Re: Defense Contract Administration
Services Region - Los Angeles
Case No. 72-5929

Dear Mr. Tremayne:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the subject case, which alleges a violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find further proceedings are unwarranted inasmuch as a reasonable basis for the complaint has not been established.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

July 8, 1976

Mr. Mark Tremayne
7413 Bradley Drive
Buena Park, CA 90620

Re: DCASR-LA -
Mark Tremayne
Case No. 72-5929

Dear Mr. Tremayne:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, have been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard, it is noted that the evidence established, contrary to your allegation, that you were provided ample opportunity to bring your representative to the meeting of July 31, 1975, in which an oral admonishment was administered. Moreover, there is no evidence to establish that the oral admonishment was motivated by your union activity but, rather, was due to your failing to follow check out procedures.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on July 23, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-10-76

775

Major Cecil H. Bray, Ret.
70 Frontier Drive
Sunrise Lakes
Conyers, Georgia 30207

Re: Federal Supply System
General Services Administration
Atlanta, Georgia
Case No. 40-6697(CA)

Dear Major Bray:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in this matter are unwarranted as a reasonable basis for the instant complaint has not been established.

Accordingly, and as, in my view, the investigation by the Area Office in this matter was proper and sufficient, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

April 2, 1976

Mr. Cecil H. Bray
70 Frontier Drive
Sunrise Lakes
Conyers, Georgia 30207

Re: General Services Administration
Federal Supply System
Personnel Department
Atlanta, Georgia
Case No. 40-6697(CA)

Dear Mr. Bray:

The above captioned case alleging violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Investigation disclosed that on or about May 6, 1975, you were transferred from the Atlanta Regional Office of GSA to its facility in Duluth, Georgia.

You allege that the transfer was due to your union activities, and that it was done in a discriminatory manner under protest and circumstances tending to deny you promotional opportunities, which you contend is a violation of Section 19(a)(1) and (2) of the Order.

The Respondent denies that an unfair labor practice was committed.

Respondent contends the transfer was based on centralizing all functions at one location. It is the position of the Respondent that it was a logical decision for management to make.

The issue is whether Respondent transferred you because of your union activities.

Investigation indicates that you and the Chief of the Branch were assigned to the Atlanta Regional Office of GSA performing Statistical Sampling work. All other employees engaged in such work were located at the Duluth facility. A decision was made to centralize all functions. Therefore, you and the Chief were transferred back to Duluth. There is no evidence that anti-union animus entered into this decision.

The fact that you are active in a union does not alone establish evidence to support a basis for a Section 19(a)(1) and (2) violation.

In the absence of evidence showing that your transfer was for reasons other than legitimate considerations, i.e., reasons to improve efficiency, a reasonable basis for a 19(a)(1) and (2) violation has not been established.

As for the Respondent's failure to promote you from a GS-05 to a GS-07, investigation discloses that you raised the issue in several meetings and eventually requested a review of your job classification. The request was granted. The job classification review was conducted in accordance with your request. The Respondent advised you on October 10, 1975, that your position was properly classified. You took no appeal from this action. No evidence has been adduced to show that the failure of Respondent to promote you was motivated by anti-union considerations.

Moreover, there is an additional consideration. Section 19(d) provides, in pertinent part:

> Issues which can properly be raised under an appeals procedure may not be raised under this section.

Complainant, therefore, may not raise the same issue under Section 19 of the Order which could be raised under an appeals procedure. The resolution of the classification issue through an appeals procedure having been available to you following Respondent's October 10, 1975, denial of your request, Section 19(d) bars the Assistant Secretary from considering the issue of your classification.

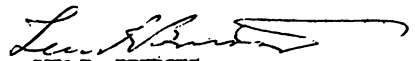
With regard to your request for an independent investigation by the Area Administrator, it was determined that the request did not warrant any action inasmuch as the subject matter the witness was expected to address would not have any direct bearing on your complaint in view of the fact that you indicated the witness would testify on matters related to your position classification.

Having found that investigation fails to disclose a reasonable basis for complaint, I am dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business April 19, 1976.

Sincerely,



LEM R. BRIDGES
Regional Administrator
Labor-Management Services

cc: Mr. David R. Wilson
Regional Labor Relations Officer
General Services Administration
1776 Peachtree Street, N.E.
Atlanta, Georgia 30309

American Federation of Government
Employees, Local 2067
3312 N. McGee Road
Duluth, Georgia 30136

bcc: Atlanta Area Office File

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-10-76

776

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: Department of the Navy
Naval Plant Representative Office
Case No. 22-6655(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find further proceedings in this matter unwarranted. Thus, in my view, the evidence herein is insufficient to establish a reasonable basis for the allegation that the Respondent failed to timely or properly implement the arbitrator's award here involved.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

May 15, 1976

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1016 - 16th Street, N.W.
Washington,D.C. 20036
(Cert. Mail No. 452171)

Re: Dept. of Navy,Naval Plant
Representative Office
Case No. 22-6655(CA)

Dear Ms. Cooper:

The above-captioned case, alleging a violation of Executive Order 11491, as amended, has been investigated and carefully considered. It does not appear that further proceedings are warranted since a reasonable basis for the complaint has not been established.

Your complaint makes two allegations: first, that the Activity did not implement the Arbitrator's award within 10 days, as required by Article 24, Section 6 of the Negotiated Agreement, and did not file exceptions with the FLRC within that time, thus violating Sections 19(a)(1) and 19(a)(6) of Executive Order 11491, as amended; secondly, that the manner in which the Activity subsequently did implement the award was also in violation of Sections 19(a)(1) and 19(a)(6) of the Executive Order.

In a follow-up letter dated March 25, 1976, you requested, pursuant to Section 203.6 of the Rules and Regulations, that the Area Administrator conduct an independent, on-sight investigation of this matter. The Area Administrator has deemed such investigation unnecessary and has not undertaken it, since there has been no showing to warrant such an investigation. I concur in the Area Administrator's determination in this regard.

The investigation has revealed that on September 22, 1975, both the Union and the Activity were notified of Arbitrator Somers' decision of September 22, 1975, which found that the Activity had violated Article 12, Section 2 of the Negotiated Agreement in failing to post a notice of the promotional opportunity before filling the position of Quality Assurance Specialist (GS-1910-5) and ordered that the position be vacated, with a promotional opportunity notice to be posted in accordance with Article 12, Section 2. The decision further stated that the Employer was not precluded from simultaneously requesting a Civil Service Commission Register listing for the position, or from soliciting an in-house or outside applicant with the requisite qualifications. By letter dated October 2, 1975,

Mr. R.L. Herbert, LMR, for the Naval Plant Representative, Baltimore, requested that the Director of Civilian Manpower Management file a petition for review of the Arbitration Award with the Federal Labor Relations Council.

On October 20, 1975, John Connerton, Labor Relations Advisor, Office of Civilian Manpower Management, Department of the Navy, requested that the Federal Labor Relations Council grant an extension of time--to November 7, 1975--for the purpose of filing exceptions to the FLRC regarding the arbitrator's award. By letter dated October 21, 1975, you informed the FLRC of your opposition to the extension. On November 5, 1975, the Council granted the Agency's request for an extension of time in which to file any exceptions in the matter until November 7, 1975. Thereafter, the Activity decided not to appeal and informed the Union on November 7, 1975 of its intention to implement the Order.

On November 7, 1975, the Activity posted a position vacancy for Industrial Engineering Technician, GS-895-5. Mr. Ellis, the occupant of the GS 1910-5 position, which was vacated pursuant to the arbitrator's decision, applied for the position. As the sole qualified applicant, he was selected. On December 3, 1975, the GS-1910-5 position was reposted. Mr. Ellis was the sole qualified applicant for this job and was selected.

You contend (1), that the Activity's delay in implementing the arbitrator's award violated Section 19(a)(1) and (6),and that (2),in creating the GS 895-05 position to "take care of Mr. Ellis" and in reinstating him to the GS 1910-5 position also violated the same sections of the Order.

With respect to point (1), you argue that Article 27, Section 6 of the contract was violated by the delay in implementing the award. If your argument is premised on a contractual violation, then under the authority of the Assistant Secretary's Report on Rulings, #49, the parties are left to their remedies under the agreement. If your argument is based on a deliberate delay to interfere with the rights of employees of your organization, then there is a lack of evidence to sustain such a premise.

With respect to point (2), that the Activity violated the Order by creating the GS 895-05 position, you argue that such conduct "makes a farce of the arbitration award". There was no evidence to indicate that the posting and filling of the GS-895-05 job was inherently improper. The Civil Service Commission found no impropriety in the posting and filling of the position. The re-posting and filling of the GS 1910-5 position was done to comply with the arbitrator's award. You argue, in essence, that Mr. Ellis' appointment was not in compliance with the arbitrator's award. In the circumstances of this case, I find that the issue of whether the terms of the arbitrator's award have been complied with is not to be decided by the Assistant Secretary but

decided pursuant to the terms of the collective bargaining agreement. There is no evidence that the Activity has failed to comply with an Arbitrator's award within the meaning of Federal Aviation Agency, A/SLMR 517 or Department of the Army, A/SLMR 412, FLRC 74 A-46. In the subject case, there is a disagreement as to whether there is compliance; there is no evidence that the compliance is a complete sham so as to warrant a conclusion that there is no compliance.

I find that you have no established a reasonable basis for finding a violation of Section 19(a)(1) and (6).

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attn: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of the request for review must be served on this office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary no later than close of business June 30, 1976.

Sincerely,

Frank P. Willette

Frank P. Willette
Acting Regional Administrator

9-10-76

777

Ms. Helen I. Harrell
2025 Peachtree Road
Apartment 927
Atlanta, Georgia 30309

Re: National Treasury Employees Union
Chapter 26 (Internal Revenue Service)
Case No. 40-6673(CO)

Dear Ms. Harrell:

This is in response to your letter dated August 18, 1976, which, in effect, requests reconsideration of your request for review in the subject case.

I have reconsidered all of the material you have submitted in regard to this case. I am still of the opinion that you failed to establish a reasonable basis for your complaint (i.e. that the union's conduct toward you was arbitrary, discriminatory, or in bad faith) and, consequently, further proceedings in this matter are unwarranted.

It should be noted that appeals with respect to decisions of the Assistant Secretary may be made to the Federal Labor Relations Council by filing appropriate and timely petitions for review. Attached for your information is a copy of the Rules and Regulations of the Federal Labor Relations Council and Federal Service Impasses Panel.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachments

March 11, 1976

Ms. Helen I. Harrell
2025 Peachtree Road
Apartment 927
Atlanta, Georgia 30309

RE: National Treasury Employees Union
Chapter 26
(Internal Revenue Service)
Case No. 40-6673(CO)

Dear Ms. Harrell:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You have alleged that Respondent violated Section 19(b)(1) of Executive Order 11491, as amended, by failing to adequately represent you in a grievance procedure.

Investigation reveals that you submitted a continuous consideration application for promotion in April, 1974. However, you were inadvertently omitted from consideration for a Tax Examiner position announced as vacant September 19, 1974, and filled November 19, 1974. When subsequently you learned you had not been considered, you filed a grievance on February 21, 1975, under the negotiated grievance procedure.

In support of your allegation you contend that Respondent: (1) allowed "unauthorized management representatives" to attend your grievance meetings; (2) did not timely schedule some of the meetings; (3) failed to see that a "desk audit" was conducted following your request; (4) permitted "manipulation" of selection criteria for the Tax Examiner position for which you applied; and, (5) did not ensure that your "proper performance evaluation" was used in considering you for a promotion.

Grievance meetings were scheduled February 26, 1975, March 6 and 11, 1975, April 18, 1975, and May 19, 1975. One or two of Respondent's representatives acted on your behalf at each meeting.

Although officials of the Personnel Office assisted management's representatives at each meeting, there is no evidence that Respondent had the authority to prohibit their attendance. Such Personnel Office assistance is apparently routinely permitted under the grievance procedure provided in the bargaining agreement between Respondent and the Internal Revenue Service.

Moreover, Respondent is without the authority to effect the requested "desk audit" or to determine which supervisory evaluation form is to be submitted to a ranking official considering an applicant for promotion. Evidence indicates that there are statutory procedures for classification appeals to effect such a "desk audit" and that both supervisory evaluations available to the ranking official yielded the same score.

While the grievance meetings in question were not strictly scheduled in accordance with the deadlines set forth in the negotiated grievance procedure, there is no evidence that Respondent encouraged dilatory scheduling or otherwise attempted to delay the grievance procedure. Steps 1 and 2 meetings were timely scheduled, and delays in scheduling the Steps 3 and 4 meetings were caused, respectively, by your desire to be represented by someone other than Respondent's agents and by the inability of the District Director or his assistant to immediately attend the final meeting.

There is no evidence that Respondent was a party to the selection process in selecting a candidate for the Tax Examiner vacancy or exercised any control or influence over the selection criteria.

There is, therefore, no evidence that Respondent, by its actions on your behalf during the grievance proceedings, failed to represent you as required by Section 10(e) of the Order.

You have also alleged that Respondent violated Section 19(b)(1) of the Order by discouraging your filing of grievances. Specifically, you contend that Ms. Mary Jean Royer, President of Chapter 26, required you to sign an unnecessary affidavit before agreeing to represent you, and made dissuasive personal statements about your grievances.

However, evidence indicates that the affidavit requested by Ms. Royer was necessitated by the late filing of your grievance. In fact, the affidavit enabled your grievance to be considered timely filed, and was used by Respondent to your benefit.

The allegedly discouraging remarks were merely the personal comments of Ms. Royer. There is no evidence that such remarks interfered with your right to file a grievance, and, as the evidence shows, did not prevent the further processing of your grievance nor did it otherwise impede Respondent in representing you.

Thus, there is no evidence that Respondent attempted to discourage your filing of grievances or in any way interfere with the exercise of your protected rights.

Finally, you have alleged that Respondent violated Section 19(b)(1) of the Order by failing to invoke arbitration for your grievance.

However, as the exclusive representative of employees in the bargaining unit of which you are a member, Respondent is entitled to exercise discretion in prosecuting employee grievances. Section 10(e) of the Order states, in relevant part, that:

> (e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership.

In its decision No. 74A-54, the Federal Labor Relations Council recognized the right of the exclusive representative to employ discretion in providing representation for unit employees:

> In summary, the second sentence of section 10(e) does not impose an affirmative duty on the exclusive representative to act for unit employees whenever it is empowered to do so under the Order, but only prescribes the manner in which the exclusive representative must provide its services to unit employees when acting within its scope of authority established by other provisions of the Order.

There is no evidence which would indicate that Respondent acted with discrimination in rejecting arbitration for your grievance. Indeed, Respondent's decision not to invoke arbitration was based entirely on its appraisal of the merits of your grievance. Such a decision was, therefore, permissable within the meaning of Section 10(e).

Thus, there is no evidence that Respondent failed to provide adequate representation within the meaning of Section 10(e), or otherwise interfered with, restrained, or coerced you in the exercise of your rights guaranteed by the Order. Absent such evidence, there is no reasonable basis for the complaint.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, Washington, D. C. 20216, not later than the close of business March 26, 1976.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-10-76

Ms. Lisa Renee Strax 778
Staff Attorney
National Federation of Federal Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: Department of Agriculture
Office of Investigation
Office of Audit
Case No. 22-5979(CA)

Dear Ms. Strax:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA PA. 19104
TELEPHONE 215-597-1134

May 26, 1976

Ms. Lisa Renee Strax
Legal Department
National Federation of Federal Employees
1737 H Street, N.W.
Washington,D.C. 20006
(Cert. Mail No. 453122)

Re: Department of Agriculture
Office of Investigation
Office of Audit
Case No. 22-5979(CA)

Dear Ms. Strax:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

On October 10, 1975, I sent you and Mr. Becker a letter indicating that I thought the issue of whether or not dues termination by the Respondent was permissible depended upon whether the withdrawal of recognition by the Activity utilizing Section 3(b)(4) of the Executive Order was proper and that the matter was being handled by the Administrative Law Judge in Case No. 22-5821(CA). The Assistant Secretary has now ruled in said case, U.S. Department of Agriculture, A/SLMR No. 643, dated May 11, 1976, that the employees were covered by the exception in Section 3(b)(4). In these circumstances, you have not established a reasonable basis that violations of Section 19(a)(1)(2)(5) and (6) have occurred.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business June 10, 1976.

Sincerely,

Frank P. Willette
Frank P. Willette
Acting Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

9-15-76

779

Ms. Janet Cooper
Staff Attorney
National Federation of
Federal Employees
1016 16th Street, N.W.
Washington, D.C. 20036

Re: Army and Air Force Exchange Service
Capitol Exchange Region Headquarters
Case No. 22-6657(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the instant complaint, which alleges a violation of Section 19(a)(1) and(6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. In reaching this disposition it was noted that the parties' negotiated agreement provides for union membership drives, although the use of agency facilities for such purposes is not specifically outlined therein. Further, the evidence establishes that the parties, in fact, met and conferred over the use of the employee breakroom requested by the Complainant and that when its use was denied by the Respondent the latter offered a conference room as an alternative. Under these circumstances, I find that there is insufficient evidence to establish a reasonable basis for the allegation that the Respondent failed to discharge its bargaining obligations in this matter.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

May 11, 1976

PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1016 16th Street, N.W.
Washington,D.C. 20036
(Cert. Mail No. 453081)

Re: Army and Air Force Exchange Service
Capitol Exchange Region Headquarters
Case No. 22-6657(CA)

Dear Ms. Cooper:

The above-captioned case alleging a violation of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

In your complaint you alleged that by letter dated December 2, 1975 the Respondent refused to negotiate on the Union's proposal that the Union be granted the use of the employee breakroom (snackbar) to conduct a Union membership drive in violation of Sections 19(a)(1) and (6).

The investigation has revealed that by letter dated June 26, 1975, to Mr. Douglas K. Otten, Labor Relations Representative, Capitol Exchange Region Headquarters, Army and Air Force Exchange, Sam King, President, NFFE, Local 1622, requested permission to conduct a membership drive beginning July 7, 1975 to run for thirty (30) working days. During the week of July 7, 1975, Mr. King met with Mr. Otten and Mr. Gary Leuesque, Personnel Manager, to discuss the details of the drive. At this meeting Mr. King requested the use of the employee breakroom (snackbar) to conduct the membership drive. Messrs. Otten and Leuesque informed him that the employee breakroom was inappropriate because supervisors, who also used the eating facilities, would be bothered by the drive; they did, however, offer him the use of the small conference room.

On July 15, 1975, Mr. King sent a letter to Major General C.W. Hospelhorn, Commanding Officer, Army and Air Force Exchange Service, stating in summary that the Respondent had denied the Union's request to use the employee breakroom to conduct a membership drive and requesting any relief the Commanding Officer could give in the matter.

On July 17, 1975, Mr. King sent a letter to Mr. Lester Killebrew, Chief, Capitol Exchange Region, Headquarters, requesting permission to conduct a membership drive in the employee breakroom beginning July 28, 1975 and to run for thirty (30) workdays. By letter dated July 24,1975, Mr. Killebrew responded stating that the Activity could not grant to the Union the use of the employee breakroom for the membership drive, cited the reasons and offered the Union the use of the small conference room on a space available basis to conduct the 30-day membership drive. On July 30, 1975, Mr. King telephoned Mr. Otten and protested the denial of the employee breakroom and was told that the management had valid reasons for denying the use of the breakroom. Also, during a labor-management meeting on August 7, 1975, Mr. King again brought up the matter of the employee breakroom and was told that it could not be used for a membership drive campaign.

Subsequently, on November 23, 1975, Mr. King sent a letter to Mr. Leuesque requesting that negotiations be held on the use of a table in the lunch break area for membership drives during the lunch breaks and requested that negotiations begin on December 8, 1975 at 10:00 a.m.

By letter dated December 2, 1975, Mr. Leuesque responded stating that the breakroom could not be made available to the Union for membership drives for the reasons cited in the July 24, 1975 letter and offered the use of the small conference room for the membership drive.

NFFE President Wolkomir filed an Unfair Labor Practice charge against the Respondent on December 15, 1975 and the subject complaint was filed by you on February 6, 1976.

You contend that the Respondent's refusal to meet and negotiate as requested in Mr. King's November 23, 1975 letter violated Sections 19(a)(1) and (6) of the Order. You argue that under Section 11(a) of the Order the Respondent is obligated to negotiate with respect to mid-contract charges in established personnel policies and practices and matters affecting working conditions and that this obligation to negotiate includes changes requested by the exclusive representative as well as those initiated by the Activity. And, if an impasse is reached, the Activity is obligated to refer the matter to the Federal Mediation and Conciliation Service per Section 16 of the Order.

In my opinion, the Respondent has no obligation under the Order to grant the Union the use of the employee breakroom to conduct a membership drive.

Section 19(a)(3) of the Order provides in part "that an agency may furnish facilities under Section 23 of the Order when consistent with the best interest of the agency, its employees, and the organization..."Moreover,

precedent decisions of the Assistant Secretary have recognized that the use of agency facilities for employee organization meetings are privileges, not rights and as such may be reasonably conditioned by the agency.1/

With respect to your contention that the Respondent is obligated to negotiate the matter with the Union under 11(a) of the Order, Section 11(a) of the Order requires that an Activity give the exclusive representative adequate notice and an opportunity to negotiate prior to changing established personnel policies and practices and matters affecting working conditions during the term of an existing agreement, unless the issues thus raised are controlled by current contractual commitments, or a clear and unmistakable waiver is present. 2/ Section 11(a) of the Order does not impose any mandatory obligation on an Activity to bargain over changes proposed or requested by the Union during the term of the contract and does not give the exclusive representative any right to demand such bargaining. An Activity may bargain with the Union on proposals submitted by the Union during the mid-term of the contract if it so desires, but is not required to do so under the Order.

Moreover, the evidence presented reveals that the Respondent did, in fact, negotiate with the Union on the Union's proposal that it be granted the use of the employee breakroom to conduct a Union membership drive. The Respondent listened to the Union's proposal, considered it, advised the Union it could not grant it the use of the employee breakroom for the membership drive because supervisors used the breakroom and offered, as a counterproposal the use of the small conference room. It was only after the Union refused the offer of the small room and insisted that the Respondent agree to its demand or declare a negotiation dispute impasse per Section 16 of the Order did the Respondent take the position that it was not required to bargain on the Union's proposal at that time, and suggested that the Union bring the proposal up in the context of negotiations/renegotiations of a new agreement.

I find nothing in the Order which requires or obligates the Respondent to submit this mid-contract proposal of the Union to the Federal Mediation and Conciliation Service.

Based upon all the foregoing, I find that you have not established a reasonable basis that a 19(a)(1) and (6) violation has occurred.

I am, therefore, dismissing the complaint in its entirety.

1/ Los Angeles Air Route Traffic Control Center, A/SLMR No. 283, and Internal Revenue Service Office of the Regional Commissioner, Western Region, A/SLMR No. 473.

2/ FLRC Report and Recommendation on Labor-Management Relations in the Federal Service, February 6, 1975.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. 20216 not later than close of business May 26, 1976.

Sincerely,

Frank P. Willette

Frank P. Willette
Acting Regional Administrator
for Labor-Management Relations

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-16-76

780

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: Northern Division
Naval Facilities
Engineering Command
Case No. 20-5544(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the subject case, which alleges violations of Section 19(a)(1), (2), (4) and (5) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that the instant complaint was not filed timely and, consequently, further proceedings in this matter are unwarranted. See, in this regard, Section 203.2(b)(2) and (3) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA 19104
TELEPHONE 215-596-1134

May 24, 1976

Ms. Janet Cooper
Staff Attorney
National Federation of
Federal Employees
1016 - 16th Street, N.W.
Washington, D.C. 20036
(Certified Mail No. 453028)

Re: Northern Division
Naval Facilities
Engineering Command
Case No. 20-5544(CA)

Dear Ms. Cooper:

The above-referenced case alleging violations of Section 19(a)(1), (2), (4) and (5) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The complaint arises from the City of Philadelphia's attempts to collect tax monies owed by nonresidents employed by the Activity. You allege that Robert Ostermueller, an employee of the Activity, suffered great embarrassment when the Activity permitted the City's "process servers" to appear at his desk without first allowing him to go to the Security Building to receive the service of process.

Investigation has disclosed that this same issue was the subject of a pre-complaint charge on September 30, 1975, which alleged a 19(a)(1) violation. The Activity responded to that charge with its final decision on October 30, 1975. Thus, in accordance with Section 203.2(b)(2) of the Assistant Secretary's Rules and Regulations, the Complainant had sixty (60) days in which to file a formal complaint. Instead, on December 30, 1975, the Complainant filed another unfair labor practice charge with the Respondent, the one out of which the instant case arises, which merely restated the Ostermueller claim under different subparagraphs of Section 19 of the Order. In fact, the union itself admits that it was reinstituting the charge.

The purpose of Section 203.2 is to require the parties to deal with their disputes promptly and to prevent stale charges from being raised.[1/]

It is apparent that the Complainant is attempting to revive a stale issue in contradiction to the Regulations, and, therefore, I find that the complaint was not timely filed.

For the reasons stated above, I am dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of this request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business June 8, 1976.

Sincerely,

Frank P. Willette
Frank P. Willette
Acting Regional Administrator
for Labor-Management Services

1/ Department of the Air Force, Headquarters, Air Force Flight Test Center, Edmunds Air Force Base, California, A/SLMR No. 255, (1973). Bureau of Reclamation, Boulder Canyon Project Office, Nevada, A/SLMR No. 330, (1974).

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-16-76

781

Mr. Mark Tremayne
7413 Bradley Drive
Buena Park, California 90620

Re: Defense Supply Agency
Defense Contract Administration Services
Case No. 72-5930(CA)

Dear Mr. Tremayne:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

May 26, 1976

Mr. Mark Tremayne
7413 Bradley Drive
Buena Park, CA 90620

Re: DCSAR -
Mark Tremayne
Case No. 72-5930

Dear Mr. Tremayne:

The above captioned case alleging violations of Section 19 of the Executive Order 11491, as amended, have been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as the dispute over the amount of time available to employees to discuss matters of personal concern is clearly a dispute over the interpretation of the existing agreement and in this situation, the Assistant Secretary will not determine the issue but will leave parties to remedies under their agreement. (Report No. 49, copy attached.) Moreover, as to the 19(a)(4) complaint there is no evidence of discrimination since you had not filed a complaint or testified under this Order at the time of the complained of action.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on June 9, 1976.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

Attachment

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-16-76

782

Mr. Sidney T. Cohen
Grand Lodge Representative
International Association of Machinists
and Aerospace Workers, AFL-CIO
P. O. Box 7768
Long Beach, California 90807

Re: Naval Air Rework Facility
North Island
San Diego, California
Case No. 72-5972(CA)

Dear Mr. Cohen:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted. Moreover, I also note that, as the issue herein appears to have been raised in a grievance procedure, the instant complaint would be barred by Section 19(d) of the Order.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

June 29, 1976

Mr. John D. Foote
Grand Lodge Representative
IAM, Lodge 726
P. O. Box 7768
Long Beach, CA 90807

Re: Naval Air Rework Facility
North Island -
IAM, Lodge 726
Case No. 72-5972

Dear Mr. Foote:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that a reasonable basis for the complaint has been established. In this regard it is noted that the decision to remove Mr. Fuchs from his temporary assignment and to return him to his permanent assignment, which is the occurrence alleged to be unfair labor practice, occurred prior to the September 26, 1975, representational efforts made by Complainant on his behalf and moreover, the action was taken after the Branch was brought up to ceiling by the selection of an employee for a permanent position on September 22, 1975. In these circumstances, and since no evidence of union animus was submitted in support of the allegations, I conclude that further proceedings are not warranted.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on July 14, 1976.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
9-16-76

783

Mr. William M. Nussbaum
President
New York-New Jersey Council of Social
Security Administration District
Offices, Local 195
American Federation of Government
Employees, AFL-CIO
60 Van Houten Street
Paterson, New Jersey 07505

Re: New York Regional Office, HEW
Bureau of District Office Operations
Social Security Administration
Case No. 30-6806(GA)

Dear Mr. Nussbaum:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the above-captioned Application for Decision on Grievability or Arbitrability.

In agreement with the Regional Administrator, and based on his reasoning, I find that the Application was properly dismissed.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the subject Application, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

June 4, 1976 In reply refer to Case No. 30-6806(GA)

William M. Nussbaum, President
New York-New Jersey Council of
Social Security Administration District
Offices, Local 195
American Federation of Government
Employees, AFL-CIO
60 Van Houten Street
Paterson, New Jersey 07505

Re: N.Y. Regional Office, HEW, Bureau
of District Office Operations, SSA

Dear Mr. Nussbaum:

The above captioned case, initiated by the filing of an Application for a Decision on Grievability under Section 6(a)(5) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as the grievance giving rise to the application was not timely filed in accordance with the grievance procedure contained in the General Agreement between the Bureau of District Office Operations, Social Security Administration, New York Region, and the New York-New Jersey Council of District Office Locals of the American Federation of Government Employees, AFL-CIO.

Article XXX, Section 3 of the Agreement which sets forth the procedure for initiating a grievance pursuant to the negotiated grievance procedure, provides, in part:

> "Any grievance on which action is not initiated with the immediate supervisor within fifteen workdays after the occurrence of the incident or event from which such grievance arose will not be presented or considered at a later date unless the employee was not aware of being aggrieved within the stated time limit."

Investigation of the application disclosed that Frank Charkowick filed a grievance pursuant to the negotiated grievance procedure on June 3, 1975, alleging the Activity had failed to timely promote him to Grade GS-7. On June 16, 1975, he invoked step 3 of the grievance procedure by requesting a meeting with the District Manager.1/ Subsequently, the matter was pursued under the Agency grievance procedure rather than the negotiated grievance procedure.

On December 12, 1975, prior to receiving a final decision from the Agency, Charkowick filed a grievance pursuant to the negotiated grievance procedure alleging the Activity had violated Article XXI, Section 1 of the Agreement by failing to timely promote him to Grade GS-7.2/ The Activity refused to process the grievance at each of the first three steps of the grievance procedure maintaining the issue was subject to a statutory appeals procedure and on January 14, 1976, it rendered a final rejection of the grievance. Subsequently, you filed a timely application seeking a decision on the grievability of the grievance.

In its response to the application, the Activity contends that the grievance upon which the application is predicated was not timely filed in accordance with Article XXX, Section 3 of the Agreement, i.e., it was not filed within fifteen workdays after the occurrence of the incident or event from which the grievance arose.

After careful consideration of all the facts, I find that the grievance was not filed within the time limits set forth in Article XXX, Section 3 of the Agreement. Mr. Charkowick was probably aware of the delay in the granting of his promotion shortly after the time he anticipated receiving it but was certainly aware of the incident in June of 1975 when he sought to invoke the negotiated grievance procedure.

1/ It is not clear as to whether or not the grievance procedure had been properly invoked at this time, but it is apparent that the aggrieved employee was aware of the incident or the event being grieved.

2/ The Agency's final decision on the grievance was rendered on January 26, 1976 based upon a December 15, 1975 requests for grievance reconsideration filed by Charkowick.

Since I have found that the grievance was untimely filed, it is not necessary to make a decision on the grievability question raised by the application.

I am, therefore, dismissing the application in this matter.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office as well as the other party. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATTN: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business June 21, 1976

Sincerely yours,

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-16-76

Mr. William Harness 784
Assistant Counsel
National Treasury Employees Union
1730 K Street, N. W.
Suite 1101
Washington, D. C. 20006

Re: Region IV, U.S. Customs Service
Case No. 42-3257(CA)

Dear Mr. Harness:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's decision in the above-named case,in which he dismissed certain portions of your complaint.

The allegations of the complaint were treated as eight numbered allegations. The Regional Administrator dismissed allegations 2, 6, and 8, and part of the allegations contained in allegation 4. Under all of the circumstances, I find that a reasonable basis has been established with respect to allegations 2, 6, and that portion of allegation 4 dismissed by the Regional Administrator. With respect to allegation 8, I agree with the Regional Administrator that further proceedings are unwarranted as there was insufficient evidence to establish a reasonable basis for that portion of the complaint.

Accordingly, the Regional Administrator is directed to reinstate allegations 2 and 6, and that portion of allegation 4 which had been dismissed and, absent settlement, to issue a notice of hearing with regard to these and allegations 1, 3, 5 and 7, and the remaining portion of allegation 4.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

May 4, 1976

Mr. Vincent L. Connery
National President
National Treasury Employees Union
1730 K Street, N.W., Suite 1101
Washington, D. C. 20006

Re: Region IV
U. S. Customs Service
Miami, Florida
Case No. 42-3257(CA)

Dear Mr. Connery:

The above captioned case alleging violations of Section 19(a)(1)(2) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully. Eight (8) separate charges were filed from October 5, 1975, to January 19, 1976. Each of the precomplaint charges will be treated separately; each is identified as Allegation 1 through Allegation 8.

Based on the investigation, the position of parties, I find there is a reasonable basis for complaint in Allegation 1, 3, part of 4, 5 and 7. For the reasons set forth below, I am dismissing Allegations 2, part of 4, 6, and 8.

Allegation No. 2—The precomplaint charge was filed on January 2, 1976. The basis of this allegation is that on October 16, 1975, National Treasury Employees Union (NTEU) filed a precomplaint charge against the Activity. The charge filed by NTEU and signed by NTEU President Connery, alleged violations of Section 19(a)(1) and (6). On November 13, 1975, Respondent answered the charge indicating that the charge was not filed by the proper person indicated in the contract executed by Complainant's predecessor, National Customs Service Association (NCSA). The January 2, 1976, charge also alleges that Respondent failed to respond to three other charges: November 7, 1975, November 13, 1975, and November 21, 1975.

Respondent failed to discuss or respond to these charges. The fundamental issue is not who may or who may not file an unfair labor practice complaint. The issue is whether employees' Section 1(a) rights are interfered with or whether an exclusive representative's collective rights under Section 19(a)(5) and (6) are impeded by the activity's refusal to discuss a precomplaint charge or by the activity's failure to discuss the precomplaint charge. In rejecting the charges, I find that Respondent's reasons, whether valid

or not, were not frivolous and, under those circumstances, I do not find that Respondent improperly sought to obstruct, prevent or delay the processing of an unfair labor practice complaint nor do I find that employees' Section 1(a) rights were interfered with or that Complainant's rights were impeded. 1/

I am, therefore, dismissing Allegation No. 2.

Allegation No. 4—The basis of this 19(a)(1)(6) allegation is that Respondent revoked the transfer of employee Ann Henning thereby unilaterally revoking an established condition of employment. Investigation discloses that on July 31, 1975, Respondent notified NCSA (Complainant's predecessor) that it was changing its policy with respect to assignments. It solicited NCSA's views. Respondent informed NCSA that it could no longer make assignments to West Palm Beach, Port Everglades and Miami seaport based on seniority and that personal convenience and personal preference would only be secondary considerations.

Complainant responded in writing on August 5, 1975. It requested negotiations concerning implementation and impact of the proposed policy modification. Complainant also stated in that letter that Respondent "cannot make a decision to implement" the policy modification prior to securing the agreement of the exclusive representative.

Respondent answered on August 11, 1975. It declined to negotiate.

I intend to issue notice of hearing only on that portion of Allegation No. 4 relating to the refusal to confer and consult on impact. I am dismissing that portion of the Allegation, however, relating to Respondent's decision to alter its assignment policy. Section 12(b)(2) provides that management shall retain the right to "hire, direct, promote, transfer, assign . . . "; Section 12(b)(5) provides that management shall retain the right to "determine the methods, means, and personnel . . . " Accordingly, while there is a reasonable basis for complaint based on Respondent's refusal to negotiate, with Complainant upon request, on impact of the transfer, management is not required to consult, confer or negotiate on the decision to transfer or the decision to alter its policy on transfers. Complainant's concurrence is not a precondition before respondent implements a change in assignment policy.

I am, therefore, dismissing that portion of Allegation No. 4 which relates to Respondent's right to change its assignment or transfer policy. Furthermore, I am dismissing that portion of Allegation No. 4 relating to Respondent's transfer of employee Henning.

1/ See United States Missile Command, Huntsville, Alabama, A/SLMR No. 367.

Notice of hearing will be issued on Respondent's refusal to consult and confer on the impact of its change of assignment policy or to afford Complainant adequate opportunity to consult and confer on impact of the new policy.

Allegation No. 6—The basis of this allegation is that Respondent conducted a meeting in October, 1975, concerning vessel entrance and clearance procedures without giving the exclusive representative advance notice as required by Section 10(e) of the Order.

Investigation discloses that a meeting was conducted sometime in October, 1975. Presumably the meeting was convened by Respondent. Those invited to the meeting included vessel agents, masters, owners, operators, inspectors and marine officers. Complainant submitted no first hand evidence as to what transpired at the meeting. Based upon a memorandum issued by Respondent's District Director Ellis on November 3, 1975, it appears that specific recommendations were made concerning certain operating procedures. In addition, it appears there was an exchange of ideas which resulted in recommendations being offered and decisions made concerning those operating procedures.

Section 10(e) provides, in pertinent part:

> The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit. (emphasis supplied)

The October, 1975, meeting was not between Respondent and employees in the exclusively recognized unit. The meeting may have ultimately affected employees' working conditions, but unit employees did not participate in the meeting nor were they asked to participate or to attend. The meeting was therefore not a formal discussion.

Based on my finding that the October, 1975, meeting was not a formal discussion within the meaning of 10(e) of the Order and in the absence of evidence that a pending employee grievance was the subject of the meeting, Respondent was not required to afford the exclusive representative the opportunity to attend the meeting.

I am, therefore, dismissing Allegation No. 6.

Allegation No. 8—The basis of this 19(a)(1)(6) allegation, as set forth in the precomplaint charge dated January 16, 1976, is that Respondent unilaterally eliminated the 12:00 midnight to 8:00 a.m. shift and discontinued coverage for the period from 10:00 p.m. to 12:00 midnight.

Complainant submitted no evidence; the allegations are set forth in the precomplaint charge.

Complainant contends that the exclusive representative was not notified of the meeting in which the changes were announced to affected employees, that Section 10(e) required notification to the union. Complainant further contends that failure to notify the union prior to the implementation of the shift change is violative of Section 19(a)(1) and (6) of the Order.

This portion of the complaint is dismissable on several grounds. First, Complainant has furnished no evidence in support of its allegations. The precomplaint charge contains allegations, but no evidence.

Second, it is well established that the establishment or change of tour of duty is intended to be excluded from the obligation to bargain under Section 11(b). The number of work shifts and the duration of the shifts comprise an essential and integral part of the "staffing pattern." Such matters are not only excludable under Section 11(b) but, in the absence of evidence that an existing agreement was unilaterally altered by other than an "appropriate authority," there is no reasonable basis for concluding that Respondent was required to consult and confer concerning the change. See Plum Island Animal Disease, FLRC No. 71A-11 and compare, Supervisor of Shipbuilding, Pascagoula, Mississippi, A/SLMR No. 390.

I am, therefore, dismissing Allegation No. 8.

In the absence of a timely filing of a request for review of my dismissal of the above allegations, I intend to issue a notice of hearing in accordance with Section 203.9 of the Regulations of the Assistant Secretary.

Such notice of hearing will be based on my finding that there is a reasonable basis for complaint on that portion of Allegation No. 4 not dismissed and all remaining portions of the complaint not herein dismissed.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business May 19, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
9-16-76

Ms. Janet Cooper
Staff Attorney
National Federation of Federal Employees
1016 16th Street, N. W.
Washington, D. C. 20036

785

Re: General Services Administration
Automated Data and Telecommunications
Service, Region 4
Montgomery, Alabama
Case No. 40-6996(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the 19(a)(2) allegation in the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

The Regional Administrator determined that a reasonable basis for the complaint exists insofar as it alleges violations of Section 19(a)(1) of the Order. Under all the circumstances herein, it is concluded that the matters alleged to violate Section 19(a)(2) of the Order also can best be resolved on the basis of evidence adduced at a hearing.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of certain portions of the complaint, is granted, and the case is hereby remanded to the Regional Administrator, who is directed to reinstate the Section 19(a)(2) allegations of the complaint and, absent settlement, to issue a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

July 15, 1976 ATLANTA, GEORGIA 30309

Ms. Janet Cooper, Staff Attorney
National Federation of Federal Employees
1016 16th Street, N.W.
Washington, D. C. 20036

Re: General Services Administration
Automated Data and Telecommunications Service
Region 4 - Montgomery, Alabama
Case No. 40-6996(CA)

Dear Ms. Cooper:

The above-captioned case alleging a violation of Section 19(a)(1) and (2) of Executive Order 11491, as amended, has been investigated and considered carefully.

I find that the evidence submitted establishes a reasonable basis for proceeding to hearing on your allegation of violation of Section 19 (a)(1). I, therefore, intend to issue a notice of hearing on that allegation.

I find that further proceedings with respect to the alleged violations of Section 19(a)(2) are not warranted inasmuch as a reasonable basis for that allegation has not been established. Thus both your complaint and its supporting evidence allege that certain statements were made in October of 1975 by a management official to unit employees, and that these statements were of a nature which threatened or interfered with employees' rights under the Order.

Section 19(a)(2) of the Order states that agency management shall not

> . . . encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion or other conditions of employment.

A necessary prerequisite for establishing a violation of Section 19(a) (2) of the Order is the occurrence of an act of discrimination with respect to a condition of employment. 1/

1/ Veterans Administration Data Processing Center, Austin, Texas, A/SLMR No. 523; see also Army and Air Force Exchange System, Vandenberg Air Force Base, California, A/SLMR No. 437.

In the instant case the precomplaint charge and the complaint itself both allege only that statements made by a supervisor were violative of the Order. There is no allegation that certain actions were taken with respect to conditions of employment which can be held to be violative of the Order. In the absence of an allegation, supported by evidence, that the named employees failed to receive quality increases or better evaluations because of their Section 1(a) activities, there is no reasonable basis for a 19(a)(2) complaint.

I am, therefore, dismissing that part of the complaint which alleges 19(a) (2) of the Order.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business July 30, 1976.

In the absence of a timely filing of a request for review of my dismissal of the Section 19(a)(2) portion of the complaint, and in the absence of my approval of a settlement agreement, notice of hearing will be issued on that portion of the complaint which alleges violation of Section 19(a) (1).

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services
Administration

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-16-76

Ms. Joan Greene
2032 Cunningham Drive, #201
Hampton, Virginia 23666

786

Re: National Association of Government Employees
Case No. 22-6662(CO)

Dear Ms. Greene:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Sections 19(b)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

May 24, 1976

PHILADEL
TELEPHONE 215-597-1134

Ms. Joan Greene
2032 Cunningham Drive, #201
Hampton, Virginia 23666
(Cert. Mail No. 453109)

Re: National Association of Government Employees (NAGE)
Case No. 22-6662(CO)

Dear Ms. Greene:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted since no reasonable basis for the complaint has been established.

The complaint alleged that the agent of the certified labor organization negotiated a contract with the Activity which did not meet the expectations of members of the negotiating committee and that said agent did not adequately consider the recommendations and suggestions of members of the negotiating committee. The investigation revealed that the President of NAGE Local R4-106 was properly appointed as the negotiator for the union and clothed with the authority to execute an agreement. He selected members of the negotiating team. The negotiating team disagreed with his assessment as to what the ground rules should be and, thereafter, what the final agreement should contain.

No evidence was introduced to indicate that pursuant to a union constitution or union past practice that members of the negotiating committee must assent to the terms of a collective bargaining agreement prior to its becoming effective. I find, therefore, that the act of the authorized agent of the labor organization in executing the agreement in the face of objections by the negotiating committee is not a violation of the Executive Order and that you have failed to establish a reasonable basis for alleging a violation of Sections 19(b)(1) and 19(b)(2) of the Order.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. 20216 not later than close of business June 8, 1976.

Sincerely,

Frank P. Willette
Acting Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

9-30-76

787

Gordon P. Ramsey, Esq.
Dickstein, Shapiro and Morin
2101 L Street, N. W.
Washington, D. C. 20037

Re: Charleston Naval Shipyard
Charleston, South Carolina
Case No. 40-6651(RO)

Dear Mr. Ramsey:

I have considered carefully the request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Objections in the above-named case.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that no objectionable conduct occurred which could have improperly affected the results of the election.

Accordingly, the request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Objections is denied, and the case is remanded to the Regional Administrator for the purpose of causing an appropriate Certification of Representative to be issued in accordance with the Assistant Secretary's Regulations.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

CHARLESTON NAVAL SHIPYARD
CHARLESTON, SOUTH CAROLINA

Activity

and

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Petitioner

CASE NO. 40-6651(RO)

and

FEDERAL EMPLOYEES METAL TRADES COUNCIL OF CHARLESTON, AFL-CIO

Intervenor

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on April 14, 1976, an election by secret ballot was conducted under the supervision of the Area Administrator, Atlanta, Georgia, on May 13, 1976.

The results of the election as set forth in the Tally of Ballots are as follows:

Approximate number of eligible voters	4600
Void Ballots	18
Votes cast for Federal Employees Metal Trades Council of Charleston, AFL-CIO	1639
Votes cast for National Association of Government Employees	1367
Votes cast against exclusive recognition	215
Valid votes counted	3221
Challenged Ballots	11
Valid votes counted plus challenged Ballots	3232

Challenges are not sufficient in number to affect the results of the election.

Timely objections to conduct improperly affecting the results of the election were filed on May 19, 1976, by the petitioner. The objections are attached hereto as Appendix A. 1/

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Administrator has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to each of the objections involved herein.

BACKGROUND

The manual balloting was scheduled from 6:00 a.m. until 7:00 p.m. on May 13, 1976. Five polling places were used throughout the Shipyard. Bus transportation was provided. The Notice of Election states as follows:

BUS TRANSPORTATION

> Passenger buses marked "Transportation to POLLS" will be operated during the hours of the election to provide transportation for voters working in the Shipyard areas South of 5th Street. The industrial bus route in that area will be used. Specific stops South of 5th Street in addition to the industrial route will include Building #199. Specific stops North of 5th Street will be each of the polling places stated in the Notice of Election. Buses will run at approximate intervals of 15 minutes. Bus runs to Building 199 will be at approximate intervals of 30 minutes. Additionally, other transportation will be provided to all employees in the unit working in outlying areas.

1/ The attachments are not included.

The Notice of Election further provided for the release of employees. It stated:

RELEASE OF EMPLOYEES

> Each department concerned will arrange to release voters in substantially equal numbers during each shift at 15 minute intervals, during voting hours, so that employees will have an opportunity to vote if they so desire.

Some voters who were on temporary duty assignment were provided with mail ballots.

Federal Employees Metal Trades Council of Charleston, AFL-CIO (FEMTCC) was certified as the exclusive representative on December 6, 1971, following an election in which National Association of Government Employees (NAGE) was the other labor organization listed on the ballot. FEMTCC and the Activity have been parties to a labor management relations agreement.

Objection No. 1 - I shall treat the following as the first objection:

> NAGE was not permitted access to unit employees equal to that accorded to FEMTCC.

NAGE asserts that Activity management denied its non-employee representative access to unit employees during non-work periods in non-work areas while permitting such access to non-employee representatives of FEMTCC. It states that the Activity policy establishing this prohibition was contrary to past practice, was not justified, and "tainted with unwarranted favoritism." It states that the Activity permitted FEMTCC to use office facilities and bulletin board space while denying such use to NAGE. It alleges that FEMTCC employee representatives acting under the guise of contract administration, actively campaigned in work areas among on-duty employees.

The FEMTCC denies that its non-employee representatives at any time entered onto Shipyard premises. It asserts that NAGE has failed to produce any evidence to the contrary. With respect to the allegations of unequal use of bulletin board space and office facilities, the FEMTCC asserts that during the campaign period it continued to use the office facilities and bulletin board space provided it by the Activity for contract administration purposes. It states that any use of these facilities for campaign purposes was forbidden, that this prohibition was obeyed by FEMTCC and enforced by management and that allegations to the contrary are unsubstantiated. With respect to the allegation that FEMTCC employee representatives campaigned on work time at work locations, FEMTCC asserts that NAGE has failed to provide proof to substantiate such allegations.

The Activity asserts that equivalent access to the electorate was provided to the two competing unions prior to the election. It notes that the rules it promulgated regarding campaigning applied equally to both labor organizations, and that any violations of such rules which may have occurred took place without its knowledge or approval. It states that during the campaign period it continued to provide FEMTCC with office facilities and bulletin board space for contract administration purposes. It asserts that NAGE has not demonstrated that it was denied reasonable access to employees. It states that during the pre-election period several reports of campaign materials were investigated by management, each case was investigated and management removed several campaign materials including flyers in support of both NAGE and FEMTCC. It further asserts that it did not approve or permit any campaigning by employee representatives on work time at work locations and no such incidents were reported to the Shipyard at the time of their occurrence.

The evidence submitted indicates that there was no pre-election agreement between the parties regarding campaigning activities. The Commander of the Activity, via memorandum dated April 13, 1976, set forth Shipyard policy regarding certain campaign activities. This policy stated the following, in part:

a. Electioneering by non-employees who represent either FEMTCC or NAGE may be conducted only outside the Naval Base perimeter fence.

c. No material of any nature expressing support or opposition for or against FEMTCC or NAGE will be placed on bulletin boards, utility poles, buildings, or any other Government property on Naval premises by FEMTCC or NAGE representatives.

It must be assured that the rules enumerated above are enforced at all levels . . .

This policy further stated that non-supervisory employees may orally solicit support or opposition to NAGE or FEMTCC and distribute literature in support of or in opposition to NAGE or FEMTCC in non-work areas provided there is no interference with the work of the Shipyard.

In a letter dated April 15, 1976, NAGE filed objections to the Shipyard's policy on campaigning. Specifically it objected to the denial of access to the Shipyard premises for its non-employee representatives. It further objected to the Shipyard's refusal to provide space within the Activity to NAGE from which it could coordinate its campaign, and the Shipyard's refusal to provide NAGE with bulletin board space.

The Commander of the Shipyard responded to these objections in both a meeting held on April 23, 1976, and a letter addressed to NAGE dated April 28, 1976. In this letter he explained that the office facilities and bulletin boards provided to FEMTCC were furnished in accordance with the provisions of the negotiated agreement between the Shipyard and FEMTCC 2/, that the use of these facilities for electioneering or campaigning purposes is not authorized and such prohibition will be enforced. In addition he stated that the union could pursue three means to contact Shipyard employees outside of work hours: (1) both non-employees and employees who represent NAGE and FEMTCC can contact employees and distribute literature in the Shipyard's outer parking lot and the entrances to the Naval Base; (2) representatives who are employees can electioneer including the distribution of campaign literature - in non-work areas during non-work time; and (3) Shipyard employees have the right to orally communicate regarding representation matters in their work areas so long as such activity does not interfere with the Shipyard's work.

I view NAGE's objections regarding these allegations to be two pronged: firstly, the validity of the Activity's election ground rules are being challenged and secondly, the propriety of the application of this policy is raised. These two aspects of the first objection will be considered separately.

2/ This agreement was effective December 22, 1972, and was of three years' duration. On December 16, 1975, by agreement of the parties, it was extended "until the challenge for exclusive recognition by the National Association of Government Employees in Case No. 40-06651(RO) is finally resolved, plus ninety (90) calendar days from the date of such resolution, provided the Federal Employees Metal Trades Council of Charleston, AFL-CIO, is entitled to continue as the exclusive representative in its present Unit at the Charleston Naval Shipyard at the date of final resolution of the recognition question." Articles III and VI of that agreement contain provisions relating to FEMTCC use of bulletin boards and office space, respectively.

Section 6 of Article III reads as follows:

> Management will designate reasonable space on unofficial bulletin boards for the exclusive use of the Council.

Section 8 of Article VI in relevant part reads as follows:

> Management agrees that space in the Shipyard, when it can be made available . . . may be used by Council representatives for meetings regarding matters pertinent to this Agreement. Management further agrees to provide approximately two hundred (200) square feet of suitable office space in the Shipyard for exclusive utilization by Council representatives during work hours for meetings regarding matters pertinent to this Agreement.

Prior decisions of the Assistant Secretary have established the right of an Activity to establish reasonable ground rules governing campaigning provided such rules do not interfere with the rights of the electorate to exercise an unencumbered and fully informed choice. 3/ The test in determining whether the Activity's proscription of certain campaign practices constituted objectionable conduct is whether its prohibitions on campaigning constituted an unwarranted restraint upon the unions' ability to communicate with the electorate.

NAGE takes the position that the Activity's policy interferred with its ability to communicate with the electorate in its prohibiting access to the Shipyard for non-employee representatives. For the Shipyard's policy on campaigning to constitute objectionable conduct it is incumbent upon NAGE as the objecting party to demonstrate that because of the policy it was unable to communicate with the electorate. 4/ While NAGE alleges this in its objections, it provides no evidence to substantiate such allegations. Moreover, an examination of the circumstances surrounding the election finds that adequate means were available for the unions to communicate with the electorate. Thus both NAGE and FEMTCC were permitted to have employee representatives campaign on Shipyard premises in non-work areas at non-work times; both unions were able to compaign at Shipyard entrances and in employee parking lots; and other channels of communication to the unit members were available, including radio, television, newspaper and billboards. When these means of communication are viewed in connection with the geographic concentration of the Shipyard and its employees, I find that the Activity's prohibition of non-employee campaigning on its premises does not constitute objectionable conduct. The fact that a more permissive policy was established in previous elections is not controlling. Regardless of past practice the Activity has the right to establish ground rules and I find the particular rule in question to be reasonable.

NAGE asserts that the Activity's ground rules were unfair in that they permitted FEMTCC use of office facilities and bulletin board space while denying NAGE the use of such facilities. All parties agree that FEMTCC was permitted to use office facilities and bulletin board space during the campaign. It is apparent that NAGE requested the use of such facilities and this request was denied by the Activity. The ground rules limited the use of the bulletin board and office facilities accorded FEMTCC to contract administration purposes only; their use for campaigning was prohibited. FEMTCC was granted the use of the office and bulletin board space under the provisions of its collective bargaining agreement with the Activity. Since the contract continued in effect during the period of the campaign, the Activity did not have the authority to unilaterally change its provisions. 5/ Moreover, the FEMTCC was obligated to administer its contract during the period of the election. The Assistant Secretary has previously ruled that when a question concerning representation has been raised and is not as yet resolved, an agency or activity may furnish services and facilities on an impartial basis to labor organizations having equivalent status. 6/ In the instant case, both NAGE and FEMTCC as parties to a representation proceeding were entitled to equal treatment by the Activity.

The prohibition on campaigning in the Activity's ground rules applied equally to both parties. The question to be resolved is whether in according FEMTCC use of the office and bulletin board facilities, while denying such use to NAGE the Activity failed to provide NAGE with a status equivalent to that it accorded to FEMTCC. With respect to the use of Activity facilities for campaign purposes, the Activity did treat each labor organization equally. While it permitted FEMTCC to continue its contractual right to use certain facilities, use of these facilities for campaigning purposes was expressly forbidden and, therefore, unrelated to the representation election and the question of equal status. Under these circumstances, I find the Activity ground rules which permitted FEMTCC to continue the use of the office facilities and bulletin board space for contract administration purposes does not constitute objectionable conduct. Whether

3/ Norfolk Naval Shipyard, A/SLMR No. 31; Portsmouth Naval Shipyard, A/SLMR No. 241.

4/ Department of the Treasury, Bureau of Customs, A/SLMR No. 169.

5/ Veterans Administration Hospital, Charleston, S.C., A/SLMR No. 87.

6/ U. S. Department of the Interior, Pacific Coast Region, Geological Survey Center, Menlo Park, California, A/SLMR No. 143; Defense Supply Agency, Defense Contract Administration Services Region SF, Burlingame, California, A/SLMR No. 247; U. S. Department of the Army, U. S. Army Natick Laboratories, Natick, Massachusettes, A/SLMR No. 263.

FEMTCC actually used these facilities for campaign purposes, an action which would be in violation of the ground rules, is a separate issue which will next be considered.

NAGE asserts that FEMTCC used the office and bulletin board facilities accorded it by the Activity for campaigning purposes. In support of this allegation NAGE submits signed statements from various employees of the Shipyard.

In a signed statement, Delbert L. Woods states that on May 13, 1976, he observed a person known to be a national representative of FEMTCC talking to a group of employees in the FEMTCC office at the Shipyard. Mr. Woods states that it appeared the FEMTCC representative was giving campaign instructions to those in the office. The FEMTCC submits a statement from Charles S. Sanders, president of the FEMTCC, in which he states that at no time during the campaign were any FEMTCC non-employee representatives present on Shipyard property to which access was prohibited by the election ground rules. Even if the person who Mr. Woods observed is assumed to be a non-employee, Mr. Woods' statement is inconclusive in establishing whether he actually was involved in campaign activities. As NAGE submits no additional evidence to support its allegation that FEMTCC non-employee representatives were permitted on Shipyard premises during the election period, I find that it has failed to support its allegation that such activity occurred.

NAGE also submits a statement from Walter G. Cook in which he states that on the date of the election he observed a FEMTCC campaign flyer posted on a particular bulletin board. Mr. Cook's statement does not identify the party responsible for the posting. The Activity asserts that during the campaign period several reports of campaign material postings were investigated by management, that in each case Shipyard management removed the material from bulletin boards, walls and other places as it appeared and came to management's attention, that flyers of both unions were removed in this manner, and that it has not established the identity of those responsible for such posting. While it appears that some incidents of posting of campaign material upon bulletin boards and in other places about the Shipyard may have occurred, the identity of the parties responsible for such posting has not been made known. If NAGE's allegation that FEMTCC abused the bulletin board privileges accorded it by the Activity is to be substantiated, it must be shown that FEMTCC agents were responsible for posting campaign material on these bulletin boards. No evidence has been submitted which alleges or supports such a finding. In the absence of such evidence, I find the allegation to be unsubstantiated.

Even if the incidents related by NAGE are assumed to have in fact occurred, standing alone, they would be insufficient to establish that FEMTCC abused the facilities provided it by management for contract administration purposes. Rather they would stand as isolated instances of improper conduct which on their face seem unlikely to influence the results of the election. In this respect it is noted that NAGE has submitted no evidence to indicate that such actions had any impact upon the free choice of the voters in the election.

NAGE submits statements from unit employees Walter C. Cook, James M. Minto, Nathaniel Richburg, Wesley W. Powell, Carl Gray and Kenneth F. Campbell which relate several instances of campaigning by FEMTCC employee representatives on work time, in work locations or near polling sites. The FEMTCC submits a statement from Charles H. Sanders in which he states that Mr. Wesley W. Powell was cited to the Shipyard for distributing NAGE literature to employees during working hours in work area. The evidence indicates that these instances are in possible violation of the Activity's ground rules. However, the evidence does not support a finding that the instances of campaigning alleged had an improper effect on the conduct of the election. In this respect the Activity's ground rules may be compared to a side agreement governing campaigning into which the parties to a representative election occasionally enter. In Report on Ruling Number 20, the Assistant Secretary ruled that he will not undertake to police such side agreements and the breach thereof, absent evidence that the conduct constituting such a breach had an independent improper effect on the conduct of the election or the results of the election. I find this reasoning to be applicable to the purported breaches of the Activity's ground rules raised by NAGE. The campaigning instances related in the employees' statements contain no gross misrepresentation of material facts which impaired the employees' ability to vote intelligently, but rather appear to fall within the rights of free expression granted to employees under Section 1(a) of the Order. 7/ Moreover no evidence has been presented which indicates that management condoned such activities or treated NAGE in a disparate manner regarding their occurrence. Indeed FEMTCC has indicated NAGE may have been campaigning in violation of the Activity's ground rules. Lastly, NAGE has presented no evidence which indicates such statements had an improper impact upon the conduct of the election. Under such circumstances, I find the instances of campaigning on work time or in work locations raised by NAGE do not constitute conduct

7/ Report on Ruling Number 32.

which warrants setting the election aside.

Based on the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 1 is found to have no merit.

Objection No. 2 - I shall treat the following as the second objection.

Numerous unit employees were denied the opportunity to vote.

NAGE asserts that supervisory personnel denied apprentice pipefitters the opportunity to vote at Number Five Dry Dock and that approximately 50 employees temporarily assigned to the Naval Weapons Station were dissuaded from voting through inconvenient, and in one instance inadequate, transportation arrangements.

The FEMTCC states that NAGE's allegation regarding the Number Five Dry Dock employees is not substantiated by any evidence. The FEMTCC admits that one busload of employees from the Naval Weapons Station arrived at the polls too late to vote. It states, however, that the number of employees involved is incapable of affecting the outcome of the election. It asserts that the transportation arrangements for the remainder of employees at the Naval Weapons Station were adequate for employees who desired to vote.

The Activity takes the position that adequate transportation to the polls was provided for the employees temporarily assigned to work at the Naval Weapons Station. It acknowledges that one busload of fifteen employees from the Naval Weapons Station arrived at the polls after they had closed and that these employees were unable to vote. The Activity denies that any apprentices assigned to Number Five Dry Dock were denied the opportunity to vote.

As NAGE submits no evidence to support its allegation that apprentices assigned to Number Five Dry Dock were denied the opportunity to vote, I find this allegation to be without merit.

With respect to the allegation that workers temporarily assigned to the Charleston Naval Weapons Station were not provided with adequate transportation to the polls, the evidence reveals that the Activity made arrangements for election day bus transportation from Wharf A at the Naval Weapons Station to the polls and that the bus left the Wharf A area as scheduled at approximately 9:00 a.m., 11:00 a.m. and 1:30 p.m. providing employees assigned to the Weapons Station and working at those times the opportunity to vote. 8/ However, the last bus departed at 6:25 p.m. arriving at the Shipyard after the polls had closed, thereby effectively denying those employees aboard the bus the opportunity to vote. 9/ The FEMTCC submits that there were no more than 20 employees aboard the bus and probably less; the Activity states that there were 15 employees; NAGE submits a statement from Mr. Jamie L. Nettles who states that he was on the delayed bus and approximates the number of workers on the bus at 20. I find that these employees, of whatever number they may have actually been, were improperly denied the opportunity to vote in the election. However, as there is no evidence that similar activity occurred elsewhere during the election, or that such denial was intentional on the behalf of the Activity, and noting the number of employees affected was so minor in relationship to the total number of employees comprising the electorate as to be incapable of affecting the outcome of the election, 10/ I find that the denial of the opportunity to vote to these employees does not constitute conduct which warrants setting the election aside.

NAGE further alleges that the transportation arrangements for employees temporarily assigned to the Charleston Naval Weapons Station were inadequate. In support of this allegation NAGE submits a statement from employee John E. Berg who states that the 9:00 a.m. bus from the Naval Weapons Station to the polls parked at a location "in excess of 1/8th of a mile" from the place where approximately 24 employees were waiting to be picked up for transporation to the polls and thereafter left for the polls without picking up the waiting employees. While given the nature of shipyard work which regularly necessitates employees walking distances considerably farther than an eighth of a mile in the performance of their duties I do not find the distance to the bus to be excessive. To require a voter to walk 1/8 of a mile in order to vote is not unreasonable. In any event, after the Shipyard was notified, another bus arrived at approximately 10:30 a.m. to provide bus transporation to the employees who had earlier missed transportation to the polls. The

8/ See the last sentence under Bus Transportation in the Background portion of this Report.

9/ The Naval Weapons Station is approximately eighteen miles from the center of the Shipyard.

10/ By my calculation a minimum of 46 employees would have to have been denied the opportunity to vote to affect the election's outcome.

Activity states, and there is no evidence to refute its statement, that the subsequent buses left from a more convenient point, which it may reasonably be inferred, was well within walking distance for employees who intended to vote. Under these circumstances, I find that, with the exception of the bus which arrived at the polls after closing and which has been considered previously, the transportation arrangements were adequate to ensure that employees temporarily assigned to the Naval Weapons Station were provided with a reasonable opportunity to cast their ballots.

NAGE submits evidence indicating that there were other instances when employees purportedly were denied the right to vote. In his statement, Mr. Delbert L. Woods identifies four employees who were assigned at a later date to temporary duty in Spain on the date of the election, May 13, 1976, and would not be given an opportunity to vote in the election. This incident involves so few employees that, in the absence of any evidence to suggest that other employees were similarly situated. I find it could have had no significant impact upon the election results. NAGE also submits the statement of Mr. Douglas H. Longmore who states that when he arrived at the polls the line was so long that he left without voting. Moreover the polls were open from 6:00 a.m. until 7:00 p.m. and the Activity agreed to release employees during work time in order to permit them to vote. Under such circumstances, and noting particularly that NAGE submitted the statement of only one employee who was dissuaded from voting due to congestion at the polls, I find that ample opportunity was provided for employees who desired to vote in the election to do so.

No additional evidence was submitted which would support NAGE's allegation that numerous unit employees were denied the opportunity to vote.

Based on the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 2 is found to have no merit.

Objection No. 3 - I shall treat the following as the third objection:

> The Shipyard supplied the FEMTCC with a list of employee names and addresses.

NAGE takes the position that as unit employees who have never been members of the FEMTCC received FEMTCC campaign literature by mail at their home addresses, FEMTCC must have received employee address lists from Shipyard sources. NAGE implies that it was not provided such lists by the Activity.

FEMTCC states that the addresses of the employees cited by NAGE were obtained from the Charleston telephone directory.

The Activity denies that it provided FEMTCC with the home addresses of the employees cited by NAGE. It states that both labor organizations were provided with a list of unit employees and that a quick review of the Charleston telephone directory can provide addresses for the employees in question.

NAGE submits statements from Mr. Haskell R. Brown, Jr., Mr. William Watson, and Mr. Homer W. Bragg in which each states that he has never been a member of FEMTCC and that he received FEMTCC campaign material at his home. The FEMTCC submits copies of pages from the Charleston telephone directory listing the home addresses of these employees.

Inasmuch as NAGE has produced no evidence to support its allegation that the Activity provided the home addresses of these or any other unit employees I find the allegations to be unsubstantiated.

Based on the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 3 is found to have no merit.

Having found that no objectionable conduct occurred improperly affecting the results of the election, the parties are advised that a Certification of Representative in behalf of the Federal Employees Metal Trades Council of Charleston, AFL-CIO, will be issued by the Area Administrator, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the

Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business August 9, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: July 23, 1976

Seymour X Alsher

SEYMOUR X ALSHER
Acting Regional Administrator
Atlanta Region

Attachment: Appendix A
Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-8-76

Mr. Henry Rushing
President, Local 1730
National Federation of Federal Employees
P. O. Box 3575
Montgomery, Alabama 36109

788

Re: Alabama National Guard
Montgomery, Alabama
Case No. 40-6970(CA)

Dear Mr. Rushing:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted. Thus, the evidence establishes that the meeting in question did not constitute a formal discussion within the meaning of Section 10(e) of the Order as it involved only an explanation of employee Griggs' rights regarding a permanent change of station. Moreover, there was insufficient evidence that Griggs was denied the right to have a Union representative present at such meeting.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

June 21, 1976 ATLANTA, GEORGIA 30309

Mr. Henry Rushing, President
Local 1730, National Federation
of Federal Employees
3739 Honeysuckle Court
Post Office Box 3575
Montgomery, Alabama 36109

RE: Alabama National Guard
Montgomery, Alabama
Case No.: 40-6970(CA)

Dear Mr. Rushing:

The complaint alleging violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Investigation discloses that Local 1730 of the National Federation of Federal Employees (NFFE) is the exclusive representative of a unit of approximately 450 employees of Respondent in the Southern Half of the State of Alabama. A grievance procedure is available for employees as set out in Respondent's Technician Personnel Manual. The procedure provides that a technician has the right to present questions and complaints to his commander and/or supervisor. It further states that when problems cannot be resolved at the supervisory level, they become grievances and the employee may then file a grievance in writing within fifteen days of the act that the technician is dissatisfied with.

Sometime in late December, 1975, Technician Ronald D. Griggs, who was employed in Auburn, Alabama, as an Administrative Supply Technician, was informed that he would be transferred to Montgomery, Alabama, a distance of approximately 60 miles, as Supply Clerk effective January 12, 1976. There is no evidence that Griggs filed a written grievance over his transfer, and it is unclear as to Griggs' intention to file a grievance and the extent to which he brought the matter up with his supervisor. The evidence establishes that Griggs was dissatisfied with the transfer as he believed it to be a disciplinary action for his having failed an inspection early in 1975. On January 2, 1976, Griggs was notified that there would be a meeting at 9:00 a.m. on Monday, January 5, concerning his transfer. Evidence discloses that Griggs contacted you in Montgomery and requested that you be present for the meeting.

On Monday, January 5, the meeting was called by Respondent's representatives in the office of Griggs' supervisor, Captain Virgil Gray. Present in addition to Captain Gray and Griggs were Colonel Ray and Major Smith from the Technician Personnel Office in Montgomery. At the outset of the meeting Colonel Ray announced that the purpose of the meeting was to discuss the moving of Griggs' family and household goods, and that it was not to discuss why he was being transferred. According to Griggs' statement, he was asked if he wanted you to be present. It was concluded by those present that there was no need for a union representative to be in attendance. The meeting proceeded without your presence or anyone else from NFFE.

You allege that the meeting was a formal discussion within the meaning of Section 10(e) of the Order and that NFFE was entitled to the opportunity to be present. You allege that Griggs had grieved informally to his supervisor over the proposed transfer and in anticipation of discussing his opposition with higher authority, requested union representation.

It is Respondent's position that the meeting was a counseling session and not a formal discussion under 10(e). Respondent contends that the meeting with Griggs was an informal discussion between a technician and management and there was no obligation to permit NFFE to be present. It denies that Section 19 of the Order was violated.

I shall treat the right of Griggs to have a representative present on his behalf, the 19(a)(1) aspect of the complaint, separate from the right of NFFE under Section 10(e) to be present at the January 5 meeting, the 19(a)(6) portion of the complaint.

With respect to the 19(a)(6) allegation, Section 10(e) of the Order requires that the labor organization be given the opportunity to be represented at formal discussions between management and employees or employees' representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees of the unit.

As stated previously, the existence of a grievance concerning Griggs' transfer is uncertain. Assuming arguendo that a grievance was pending concerning Griggs' transfer to Montgomery, the meeting conducted by Smith and Gray from the Technician Personnel Office was for the purpose of discussing with Griggs the moving of his family and household goods to Montgomery. There is no evidence that Griggs' grievance was brought up either by Griggs or Respondent's representatives. Nor is there evidence that anything other than the mechanics of the transfer, that is the moving of Griggs' family and personal effects, and the rules with respect thereto, was discussed. There is no contention or evidence that Smith and Gray played any role in the grievance or appeal process or that they attempted to or were empowered to resolve or adjust Griggs' grievance. Their role was limited to discussing the mechanics of the move. In the absence of evidence that a grievance was being adjusted

or resolved or that matters were discussed which would have an impact on the unit, management was not required to give the representative an opportunity to be present. Accordingly, I find that the meeting of January 5 was not a formal discussion within the meaning of Section 10(e). Therefore, there is no reasonable basis for a 19(a)(6) complaint.

With respect to the allegation that Griggs was denied union representation, there is evidence that Griggs sought to have you present and to represent him when he learned that a meeting was scheduled for January 5 to discuss his transfer. It is reasonable to assume that Griggs believed his transfer would be discussed, that he would be given the opportunity to "argue his case" and that possibly his "grievance" would be resolved. As the evidence discloses, however, the meeting in Gray's office was not called for the purpose of discussing the transfer. What was discussed, which I have previously stated, was the process of moving from Auburn to Montgomery. According to your statement submitted to support the complaint, Griggs told you "this was not what he expected to discuss during the meeting."

Even if Griggs did request that you be present, it was announced at the outset of the meeting that the meeting was not called to deal with the transfer or any disciplinary action. The meeting related to the mechanics of the transfer and not to any grievance concerning it. In the absence of evidence that the meeting concerned Griggs' grievance, its resolution or disciplinary action, there is no basis for a conclusion that Griggs' was denied representation or that he was otherwise interfered with, restrained, or coerced in the exercise of rights assured by the Order. Accordingly, there is no reasonable basis for the 19(a)(1) complaint.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business July 6, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-12-76

Robert Canavan, Esq.
General Counsel 789
National Association of Government
Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: National Weather Service
Case No. 22-7313(CA)

Dear Mr. Canavan:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1), (3) and (6) of Executive Order 11491, as amended.

The evidence reveals that on April 30, 1976, the Respondent Activity properly served a final written decision on the charging party, National Association of Government Employees. The instant complaint was received in the Area Office on June 30, 1976. In agreement with the Acting Regional Administrator, I find that the instant complaint is procedurally defective, as it was filed more than 60 days from the date on which the final written decision on the charge was served on the charging party. See Section 203.2(b)(2) of the Assistant Secretary's Regulations.

Under these circumstances, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

August 12, 1976

PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

Mr. Robert J. Canavan, Counsel
National Association of Government Employees
285 Dorchester Avenue
Boston, Massachusetts 02127
(366686)

Re: National Weather Service
Case No. 22-7313(CA)

Dear Mr. Canavan:

In the above-captioned case your organization alleged violations of Section 19 of the Order.

I find that your complaint is procedurally defective because it has not been timely filed.

Section 203.2 of the Assistant Secretary's Rules and Regulations requires that a formal complaint must be filed within nine (9) months of the occurrence of the alleged unfair labor practice or within sixty (60) days of the service of a Respondent's written final decision on the charging party, whichever is the shorter period of time. Thus, the Activity's final response was served on you on April 30, 1976, requiring that the formal complaint be filed by June 29, 1976. Your complaint was filed in the Washington Area Office on June 30, 1976.

Accordingly, since your complaint was filed untimely, the merits of the subject case have not been considered,and I am, therefore, dismissing your complaint in its entirety. 1/

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

1/ See Rulings on Requests for Review 164, 490, 497.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business August 27, 1976.

Sincerely,

Hilary M. Sheply
Acting Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-12-76

Robert Canavan, Esq.
General Counsel
National Association of Government Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

790

Re: National Weather Service
Case No. 22-7316(CA)

Dear Mr. Canavan:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1), (3) and (6) of Executive Order 11491, as amended.

The evidence reveals that, on April 30, 1976, the Respondent Activity properly served a final written decision on the charging party, National Association of Government Employees. The instant complaint was received in the Area Office on July 1, 1976. In agreement with the Acting Regional Administrator, I find that the instant complaint is procedurally defective, as it was filed more than 60 days from the date on which the final written decision on the charge was served on the charging party. See Section 203.2(b)(2) of the Assistant Secretary's Regulations.

Under these circumstances, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

August 12, 1976

Mr. Robert J. Canavan, Counsel
National Association of Government Employees
285 Dorchester Avenue
Boston, Massachusetts 02127
(368000)

Re: National Weather Service
Case No. 22-7316(CA)

Dear Mr. Canavan:

In the above-captioned case your organization alleged violations of Section 19 of the Order.

I find that your complaint is procedurally defective because it has not been timely filed.

Section 203.2 of the Assistant Secretary's Rules and Regulations requires that a formal complaint must be filed within nine (9) months of the occurrence of the alleged unfair labor practice or within sixty (60) days of the service of a Respondent's written final decision on the charging party, whichever is the shorter period of time. Thus, the Activity's final response was served on you on April 30, 1976, requiring that the formal complaint be filed by June 29, 1976. Your complaint was filed in the Washington Area Office on July 1, 1976.

Accordingly, since your complaint was not timely filed, the merits of the subject case have not been considered, and I am dismissing your complaint in its entirety. 1/

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

1/ See Rulings on Request for Review 164, 190, 197.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business August 27, 1976.

Sincerely,

Hilary M. Sheply

Hilary M. Sheply
Acting Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-12-76

791

Mr. Mark D. Tremayne
7413 Bradley Drive
Buena Park, California 90620

Re: Defense Supply Agency
Defense Contract Administrative
Services Region
Los Angeles, California
Case No. 72-5933

Dear Mr. Tremayne:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established, and consequently, further proceedings in this matter are unwarranted. It should be noted that matters raised in your request for review, which had not previously been raised with the Regional Administrator, have not been considered. See Assistant Secretary's Report on a Ruling No. 46, copy enclosed.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

July 21, 1976

Mr. Mark Tremayne
7413 Bradley Drive
Buena Park, CA 90620

Re: DCASR-LA -
Mark Tremayne
Case No. 72-5933

Dear Mr. Tremayne:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Resolution of the question you raise on promotion policies and procedures is covered in Article 34 of the collective bargaining agreement and the proper forum for resolution of disputes in that regard is the negotiated grievance procedure. Colonel Juhl's suggestion that you utilize the negotiated grievance procedure was, therefore, consonant with the manner in which the dispute should be resolved and cannot be considered interference with your rights under the Executive Order. Moreover, no evidence is presented which would indicate that Colonel Juhl's advice involved union animus in general or animus to you in particular for your union membership or because you have filed a complaint under the Order.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business August 5, 1976.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

October 15, 1976

792

Mr. Samuel Kolesar
3018 Cade Street
Long Beach, California 90805

Re: AFGE, LU 2161
Samuel Kolesar
Case No. 72-6092

Dear Mr. Kolesar:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on August 20, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on September 7, 1976. Your request for review postmarked September 20, 1976 was received by the Assistant Secretary subsequent to September 7, 1976.

Accordingly, since your request for review was filed untimely, and I find your stated reasons for late filing insufficient to warrant acceptance of such a late filing, the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

REGIONAL OFFICE

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: 415-556-5915

August 20, 1976

Mr. Samuel Kolesar
3018 Cade Street
Long Beach, CA 90805

Re: AFGE, LU 2161 -
Samuel Kolesar
Case No. 72-6092

Dear Mr. Kolesar:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. In this regard it is noted that the March 18, 1976, letter to the Respondent does not appear to allege a violation of the Order as required under Section 203.2(a)(1) of the Regulations of the Assistant Secretary and, therefore, cannot be viewed as an unfair labor practice charge. However, assuming arguendo that the letter was deemed to be a charge within the meaning of the regulations, there was no evidence submitted that Respondent interfered, restrained, or coerced you in the exercise of your rights in violation of Section 19(b)(1) of the Order. In this regard it is noted that you did receive a response from the Respondent regarding your request for assistance, that you were advised both orally and in writing that an employee must first file a grievance and proceed through step four of the grievance procedure before the union may request arbitration, and that you did not file a grievance. In view of the foregoing, I find that union representation was not refused you nor had the union acted with animus toward you because you were not a member of the union.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on September 7, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-15-76

793

Mr. William Harness
Assistant Counsel
National Treasury Employees Union
1730 K Street, N. W. - Suite 1101
Washington, D. C. 20006

Re: Internal Revenue Service
Jacksonville District
Case No. 42-3334(CA)

Dear Mr. Harness:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that the instant case involves substantial questions of fact which can best be resolved on the basis of record testimony taken at a hearing.

Accordingly, the Regional Administrator is directed to reinstate the instant complaint, and, absent settlement, to issue a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

June 30, 1976

Mr. William Harness, National President
National Treasury Employees Union
1730 K Street, N.W. - Suite 1101
Washington, D. C. 20006

RE: Internal Revenue Service
Jacksonville District
Jacksonville, Florida
Case No. 42-3334(CA)

Dear Mr. Harness:

The above captioned case alleging violations of Sections 19(a)(1) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The Complainant, National Treasury Employees Union (NTEU) alleges, in substance, that starting in November, 1975, the Respondent, Jacksonville District, Internal Revenue Service (hereinafter referred to as the District) required certain employees in the exclusive unit to take an examination for the purpose of determining whether additional training was required. It is alleged that this was accomplished without affording the exclusive representative specific notice so as to allow for negotiations on impact and implementation.

The Jacksonville District Council of NTEU was certified as the exclusive representative. 1/ The employees of the District are covered by a multi-district agreement between Internal Revenue Service (hereinafter referred to as IRS) and NTEU.

It is undisputed that on October 10, 1975, a meeting was held at the IRS headquarters in Washington, D. C. Attending that meeting were the NTEU General Counsel and the NTEU Executive Vice President. IRS was represented by the Director of the Taxpayer Service Division and other IRS personnel. At the meeting the NTEU representatives were informed that IRS planned to conduct a testing program among its personnel throughout the various districts. Thereafter, starting in mid-November, 1975, the testing began.

Complainant contends that the level of recognition is at the District level and that there was no notification to NTEU at the District level.

1/ At the time of certification in 1970, the name of the national labor organization was National Association of Internal Revenue Employees (NAIRE). The designation of NAIRE has since been changed to NTEU.

Additionally, Complainant contends that NTEU never agreed to the proposed testing and that IRS's memorandum stating that it had agreed to the testing is in error.

It is not necessary to decide whether or not the NTEU officers had agreed to the testing program at the October 10, 1975, meeting. The essential facts determining whether or not there is a reasonable basis for complaint is that NTEU's national officers were notified on October 10, 1975, and testing did not begin until November 17, 1975. In the interim neither NTEU, at the national level, nor NTEU at the district level requested consultation on impact and implementation.

In arriving at my decision to dismiss the complaint, I find it unnecessary to determine whether this case is governed by the Lackland case. 2/ Respondent contends that since the policy on testing was equally applicable to all the subordinate activities of IRS, including the District, Respondent is under no obligation to meet and confer. In the subject case, the decision to initiate and to implement the testing program did not come about as a result of the issuance of "published agency policies and regulations" (underscoring mine) which is the Section 11(a) language cited by the Council in Lackland.

I find that the officers of NTEU were notified of the proposed testing program in sufficient time to allow the NTEU at the District level to request consultation on impact and implementation. The fact that IRS did not notify the NTEU's representatives in Jacksonville does not, in light of the October 10, 1975, meeting, relieve NTEU at the Jacksonville District level of the responsibility to request consultation on impact and implementation.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business July 15, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services

2/ Air Force Defense Language Institute, English Language Branch, Lackland Air Force Base, A/SLMR No. 322; FLRC No. 73A-64.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
10-15-76

Mr. William Harness
Assistant Counsel
National Treasury Employees Union
1730 K Street, N. W. - Suite 1101
Washington, D. C. 20006

794

Re: Internal Revenue Service
Birmingham District Office
Birmingham, Alabama
Case No. 40-6830(GA)

Dear Mr. Harness:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the above-referenced Application for Decision on Grievability or Arbitrability.

The Application herein was filed by the President of the National Treasury Employees Union on behalf of Chapter 12. While, contrary to the Regional Administrator, I find that Chapter 12 was a proper party in this case, I find, in agreement with the Regional Administrator, that the instant Application for Decision on Grievability or Arbitrability was properly dismissed. It has previously been established that for an application to be timely filed when arbitration is the final appellate step in a negotiated grievance procedure, arbitration must have been invoked, and a final written rejection of the request for arbitration by the other party to the agreement must have been received prior to the filing of the application. See Report on a Ruling No. 56, copy attached.

As arbitration was not invoked herein, and noting also that allegations raised for the first time in your request for review (i.e., that DeWitt was not the proper party to issue a notice of final decision), will not be considered by the Assistant Secretary at the request for review stage of a proceeding (see Report on a Ruling No. 46, copy attached), your request for review, seeking reversal of the Regional Administrator's dismissal of the instant Application, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachments

March 16, 1976

Mr. William Harness
Assistant Counsel
National Treasury Employees Union
1730 K Street, N.W. - Suite 1101
Washington, D. C. 20006

RE: Internal Revenue Service
Birmingham District Office
Birmingham, Alabama
Case No. 40-6830(GA)

Dear Mr. Harness:

The above captioned Application for Decision on Grievability or Arbitrability filed pursuant to Section 205.1(b) of the Regulations of the Assistant Secretary has been carefully considered.

It does not appear that further proceedings are warranted.

Chapter 12, National Association of Internal Revenue Employees (NAIRE) was certified as the exclusive representative of the following unit on October 4, 1972: 1/

> All professional and non-professional employees of the Internal Revenue Service, Birmingham District including all term, temporary and cooperative student employees.

The normal exclusions and others were excluded.

Subsequently, NAIRE's name was changed to National Treasury Employees Union (NTEU).

The parties to a multi-district labor agreement, executed on May 3, 1974, are Internal Revenue Service for the various IRS Districts and NTEU for various NTEU Chapters including NTEU Chapter 12. The labor agreement covers employees in the Birmingham District and the Jacksonville District.

The labor agreement includes a four step grievance procedure (Article 35, Section 7) and an Appeals section. Step 4 of Section 7 provides for an appeal to the District Director. The Appeals Section, Article 35, Section 8 provides:

1/ Case No. 40-3105(RO)

> Adverse decisions rendered in Step 4 may be appealed to arbitration as provided in Article 36, provided such appeal is made within twenty-one (21) days of the decisions rendered in Step 4 of Section 7, and provided further the Union notifies the Office of the District Director by certified mail of its decision to do so.

On October 23, 1975, employee Ronald Denson and "NTEU Representative" King filed a grievance under Article 35. The grievants alleged that Article 7 of the agreement had been violated when the Activity failed to select Denson for a promotion. Article 7 of the Agreement deals with Promotions/Other Competitive Actions.

The Activity rejected the grievance on October 31, 1975, on the grounds that Denson was not a member of the bargaining unit in the Birmingham District and that the grievance is therefore not grievable under the multi-district agreement. On November 25, 1975, the District Director reaffirmed the October 31, 1975, rejection and stated that the October 31 rejection should be considered as the Activity's "final decision."

Neither the Applicant, NTEU, nor Chapter 12, NTEU invoked arbitration under Article 35, Section 8.

NTEU contends that the grievant and all employees who are physically located in the Birmingham District are covered by the labor agreement; NTEU contends that although Denson and other employees may have been administratively transferred to the Jacksonville District, they are de facto employees of the Birmingham District.

The Activity asserts that the application is procedurally defective because Chapter 12, NTEU is the certified exclusive representative, not NTEU and that Chapter 12, NTEU, not NTEU is a party to the agreement. Therefore, argues the Activity, since NTEU, not Chapter 12, NTEU, filed the application, it is not qualified to file as a party under Section 205.1(b) of the Regulations.

The Activity further contends that NTEU does not have nationwide exclusive recognition, that the negotiated agreement is based upon separate districts and since Denson was transferred out of the Birmingham unit, he may not grieve under the negotiated grievance procedure his non-selection in a district other than the one to which he is assigned.

With respect to the Activity's contention that the application is fatally procedurally defective because NTEU is not a party to the agreement, the Activity's argument is misplaced. The text of the agreement

refers to the "respective parties" as having affixed their signatures. The agreement then names "National Treasury Employees Union"; various national staff representatives including the Counsel for NTEU signed the agreement. I find that NTEU is a party to the agreement and is qualified to file the instant application under Section 205.1(b) of the Regulations of the Assistant Secretary.

The Applicant did not pursue the grievance through Steps 2 and 3 of the grievance procedure but, instead, went directly to Step 4 to seek a decision from the District Director. When the District Director rejected the grievance on November 25, 1975, I find the rejection as having been accomplished under Step 4 of the grievance procedure.

The arbitration procedure, Article 35, Section 8, is part of the negotiated grievance procedure. The Applicant, having failed to avail itself of the arbitration procedure, did not exhaust all internal remedies. Report Number 56 issued October 15, 1974, reads:

> Problem
>
> The question was raised whether, for the purposes of computing the sixty (60) day filing period of an Application for Decision on Grievability or Arbitrability under Section 205.2(a) of the Assistant Secretary's Regulations, a final written rejection of the arbitrability of a matter in dispute may be made prior to the arbitration clause of the negotiated agreement actually being invoked.
>
> Ruling
>
> For the purposes of computing the sixty (60) day filing period of an Application for Decision on Grievability or Arbitrability under Section 205.2(a) of the Assistant Secretary's Regulations, there must be a final written rejection after the arbitration clause is invoked. 2/

Section 205.2(b) provides, in pertinent part:

> . . . an application for a decision . . . must be filed within sixty (60) days after service on the applicant of a written rejection of its grievance on the grounds that the matter is not subject to the grievance procedure in the existing agreement . . .

2/ Section 205.2(a) has been redesignated as 205.2(b).

As the grievance procedure includes arbitration and as the applicant failed to invoke arbitration, the Activity did not provide the applicant with its final written rejection of the grievance as required by Report No. 56. Therefore, no determination can be made as to whether the grievance is on a matter subject to the grievance procedure.

I am, therefore, dismissing the application.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business March 31, 1976.

Sincerely,

LEM R. BRIDGES
Assistant Regional Director
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

Ms. Joan Greene
2032 Cunningham Drive #201
Hampton, Virginia 23666

Re: National Association of Government Employees
Case No. 22-6661(CO)

Dear Ms. Greene:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 19(b)(1) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that the matter charged, removal of the Complainant as local president by the national union under the circumstances alleged, does not constitute an unfair labor practice within the meaning of Section 19 of the Order. Since I find that a reasonable basis for the instant complaint has not been established, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

May 27, 1976

Ms. Joan Greene
2032 Cunningham Drive, #201
Hampton, Virginia 23666
(Cert. Mail No. 453118)

Re: National Association of Government Employees (NAGE)
22-6661(CO)

Dear Ms. Greene:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. As will be indicated below, it would appear that further proceedings are not warranted with respect to some of the allegations but that other proceedings are warranted with respect to the remaining allegations.

In your complaint you allege that the respondent national labor organization interfered with, restrained and coerced you in your right under Section 1(a) of the Order to form a labor organization freely and without fear of penalty or reprisal, when its National President, Kenneth T. Lyons, by letter dated May 2, 1975, removed you from your appointive position as President Pro-Tem of NAGE Local R4-106, Langley Air Force Base, Virginia. It is your position that negotiating a first collective bargaining agreement is part of the process of forming a union. You state that your removal from office was intended to prevent you from negotiating a contract on behalf of NAGE Local R4-106, and to allow Mr. Daniel Hurd to negotiate the contract instead. It is in this sense that you allege interference with your right to form a union.

Your complaint also alleges that the manner in which Mr. Lyons removed you from office was arbitrary and capricious, and that you were not served with specific charges, accorded a fair hearing, or given time to prepare a defense.

In my view, your concept that the negotiating of a contract is part of the process of forming a union is without merit and is not supported by the Order.

I find, accordingly, that you have failed to establish that your removal from office interfered with your Section 1(a) right to form a union, in violation of Section 19(b)(1) of the Order.

With regard to the allegation that the manner of your removal from office was arbitrary and capricious and did not afford you due process, the investigation has revealed that you first raised this allegation in the complaint itself, and did not mention it in your unfair labor practice charge dated October 27, 1975 as required by Section 203.2(b)(1) of the Rules and Regulations. On this basis alone the allegation cannot be considered under Section 19 of the Executive Order. 1/

I am, therefore, dismissing in its entirety that portion of the complaint which deals with your removal from office.

In citing President Lyons' letter of May 2, 1975 as violating your Section 1(a) rights under the Order, your complaint incorporated not only your removal from office but the fact that the National Executive Committee of NAGE has barred you from membership in the organization.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may appeal this action by filing a request for review of that part of this decision which dismisses a portion of the alleged violations, and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. not later than close of business June 14, 1976.

Sincerely,

Frank P. Willette

Frank P. Willette
Acting Regional Administrator

1/ See Section 18 and Part 204 of the Rules and Regulations of the Assistant Secretary for Standards of Conduct for Labor Organizations.

Richard Regnery
President, Local 3008 - AFGE
4020 Durand Ave.
Racine, Wisconsin 53405

Re: Department of HEW
Social Security Administration
Racine District Office
Case No. 51-3337(CA)

Dear Mr. Regnery:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on September 21, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on October 6, 1976. Your request for review postmarked on October 5, 1976, was received by the Assistant Secretary subsequent to October 6, 1976.

Accordingly, since your request for review was filed untimely, the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,
SOCIAL SECURITY ADMINISTRATION,
RACINE DISTRICT OFFICE,
RACINE, WISCONSIN,

Respondent

and

Case No. 51-3337(CA)

LOCAL 3008, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO,

Complainant

21 SEP 1976

The Complaint in the above-captioned case was filed in the office of the Minneapolis Area Administrator November 24, 1975. It alleges violations of Sections 19(a)(1) and (6) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in its entirety.

Complainant alleges that Respondent violated Sections 19(a)(1) and (6) of the Order by announcing at a general staff meeting that effective the following Monday two field representatives assigned to the District Office would be scheduled as in-office interviewers one day per week. Complainant alleges that this announcement was made without prior consultation with the exclusive representative.

On July 31, 1975, the Complainant filed a precomplaint charge concerning the Respondent's announcing a change in working rules without prior consultation with Complainant. On September 18, 1975, Respondent acknowledged that it had mentioned the proposed change in assignment briefly at a staff meeting on July 11th before receiving Complainant's input. However, Respondent indicated in its reply to the precomplaint charge that in its opinion the afternoon meeting of July 11th was consultation before implementation and indicated that its attempts to resolve the charges informally were complete. Complainant received this decision September 19, 1975, but did not file the Complaint until November 24, 1975, 65 days after receipt of Respondent's decision. It was received in the office of the Chicago Area Administrator, on November 24, but was forwarded to the office of the Minneapolis Area Administrator as the Chicago Area Administrator no longer had jurisdiction over the State of Wisconsin. I shall consider the Complaint as timely filed in that during the Labor Management meeting between the parties September 19, 1975, Respondent indicated that it had not yet fully evaluated the field representative in-office interviewing project. Therefore, although Respondent's letter of September 18 is designated a final written response, and

Complainant did not file its Complaint in the office of the Chicago Area Administrator until 65 days later, the record reveals evidence that Complainant had reason to believe that Respondent had not concluded its consideration of the subject matter, and I shall accordingly consider the subject Complaint as properly before me.

Respondent in its response to the Complaint states that it has the authority under the Executive Order, Sections 11(b) and 12(b) to direct and assign employees of the unit including the decision to assign field representatives to in-office interviewing. Respondent states that it recognizes that this decision is not subject to obligation to consult, although the impact of this decision is so subject.

The investigation reveals that on Monday, June 30, 1975, Respondent's district manager talked to one of the unit members and field representatives about plans to use the field representative for in-office interviewing. The record reflects that the other field representative, the vice president of Complainant labor organization, was at that time on annual leave, and therefore unavailable for the discussion. On Thursday, July 10, Respondent's district manager talked briefly with Complainant's president indicating that Respondent wanted a meeting to discuss the use of the field representatives for interviewing in the district office. Because of the absence again of the vice president of Complainant labor organization, it was agreed that the meeting would take place the next day, Friday, July 11. During the July 10 conversation described above, Respondent gave a copy of the tentative schedule to Complainant's president, to the other unit member and field representative involved, and also put a copy of the tentative schedule on Complainant's vice president's desk.

On Friday morning, July 11, Respondent's district manager mentioned at the district office staff meeting that field representatives would be doing in-office interviewing but indicated that the actual scheduling was tentative. On the afternoon of Friday, July 11, Respondent and Complainant met and discussed the implementation of the decision to utilize field representatives in in-office interviewing. The meeting lasted for approximately two and one-half hours. During this meeting the objections of Complainant were discussed, responded to, and changes were made in the tentative schedule based upon Complainant's input. Complainant requested that the entire plan be put in writing, and on Monday, July 14, Respondent prepared a memo on the plan, and gave copies first to Complainant, then to the field representatives involved, and to the staff. The implementation of the decision to use the field representatives commenced with Monday, July 14.

Based upon the information furnished in this case, I find no evidence that Respondent has interfered with or restrained the rights of Complainant under the Order, or that Respondent has failed to consult or confer with Complainant before implementing a decision made by Respondent. To the contrary, I find evidence in the record that Respondent made several

attempts to discuss the implementation of its decision with Complainant, and that specifically, on July 11, after announcing the decision at the staff meeting, Respondent spent over two hours discussing the implementation of the decision with Complainant. I find that Respondent's authority to make the decision to direct and assign employees in the unit a right guaranteed to Respondent under Sections 11(b) and 12(b) of the Order. I find further that Respondent's attempts to discuss the implementation of this decision with Complainant and with unit members on June 30, July 9, July 10, and most importantly on July 11, are ample evidence that at no time did Respondent's officials refuse to deal with or negotiate with Complainant over the implementation of their decision. 1/ It is clear that under the Order when an activity is privileged to make certain changes without bargaining with the union, it must, nevertheless, bargain about the method or procedures it intends to use to implement the change, and must concern itself with the impact of such change on any adversely affected employees. 2/ In the instant case, the Respondent notified the union of the contemplated reassignment of field representatives, and that at no time did Respondent refuse to bargain about the implementation of this reassignment. The record reflects that Complainant's suggestions were not only listened to but were incorporated in Respondent's plans, and that although a change in working conditions not to the liking of the Complainant was instituted by the Respondent, Respondent did engage in prior good faith consultation with Complainant, received its input on the proposed plan, and solicited additional comments from Complainant prior to the implementation of the decision July 14, 1975. Respondent's announcement of the decision during the staff meeting of July 11 was merely an announcement of the decision, and is not to be confused with implementation of the decision. 3/ There is no negotiated agreement between the parties, and no obligation imposed on Respondent therein that requires agreement between the parties prior to instituting a change in working conditions upon which there has been prior good faith consultation.

In summary, I find no reasonable basis for Complainant's allegations, and accordingly I will dismiss the Complaint in its entirety.

Having carefully considered all the facts and circumstances in this case including the charge, the Complaint, and the information submitted by the parties, this Complaint is hereby dismissed in its entirety. Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a request for review with the Assistant Secretary, the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon

1/ Department of Transportation, Office of Administrative Operations, A/SLMR No. 683.
2/ Department of the Navy, Marine Corps Supply Center, Barstow, California, A/SLMR No. 692.
3/ Department of Health, Education and Welfare, Social Security Administration, Western Program Center, San Francisco, California, A/SLMR No. 501.

this office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATTN: Office of Federal Labor-Management Relations, LMSA, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business October 6, 1976.

Dated at Chicago, Illinois, this 21ST day of September, 1976.

R. C. DeMarco, Regional Administrator
U. S. Department of Labor, LMSA
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-20-76

797

Mr. Donald J. Fosdick
President, Local 1658
National Federation of Federal
Employees
540 N Street, N. W.
Washington, D. C. 20024

Re: Central Office, Bureau of Indian Affairs
Case No. 22-6764(AP)

Dear Mr. Fosdick:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability and Arbitrability in the subject case.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that the issues raised in the instant grievance are neither grievable nor arbitrable under the parties' negotiated agreement.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability and Arbitrability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

CENTRAL OFFICE, BUREAU OF INDIAN AFFAIRS

(Activity/Applicant)

and Case No.22-6764(AP)

NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 1658, INDEPENDENT

(Labor Organization)

REPORT AND FINDINGS

ON

GRIEVABILITY AND ARBITRABILITY

Upon an Application for Decision on Grievability and Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

On about July 12, 1975, Local 1658, on behalf of Viola Le Croix and Dean Poleahla, filed grievances over alleged violations of the parties' negotiated agreement. More specifically, Le Croix's grievance addressed the alleged non-implementation of the Equal Employment Opportunity law and Affirmative Action plan, the alleged lack of an operational training program or upward mobility program in her division, the alleged non-implementation of the Indian preference laws and the alleged disparate implementation of a career development program for Indians versus non-Indians. Poleahla's grievance centered on uncomplimentary comments allegedly made by his former supervisor to the effect that he (Poleahla) had a bad time and attendance record, was not at his desk when he should be, had been removed from a training program and had been downgraded in a RIF.

Various meetings and correspondence ensued over the succeeding months which ultimately culminated in January 1976 in the Union announcing its intention to solicit a panel of arbitrators in order to pursue the grievances to arbitration and the Activity taking the position that it considered the grievances to be neither grievable nor arbitrable.

On March 25, 1976, the instant application was filed by the Activity seeking a determination by the Assistant Secretary whether the grievances of Le Croix and Poliahla were subject to the grievance or arbitration procedures of the parties' negotiated agreement (Article 7) or a statutory appeals procedure.

The relevant portions of the contract are Articles 7, 8, 14 and 18. (The Union had made reference to Articles 21 and 22). However, no such articles are to be found in the agreement submitted by both parties in relation to the application.) The relevant portions of the contract are quoted hereafter:

ARTICLE 7 - GRIEVANCES, APPEALS AND DISCIPLINARY ACTION (In part)

7.1 STATEMENT OF PRINCIPLE. The employer and NFFE 1658 recognize the importance of settling disagreements and misunderstandings in an orderly, prompt and fair manner that will maintain the self-respect of the employee and be consistent with the principles of good management. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest possible level of supervision.

7.2 EMPLOYEE PROTECTION. Employees will be unimpeded and free from restraint, interference, coercion, discrimination or reprisal in seeking adjudication of their grievances and appeals.

7.3 NFFE 1658 REPRESENTATION RIGHTS. The employer and NFFE 1658 recognize that grievances are personal in nature and that the aggrieved employees or groups of employees must have the right in presenting their grievances to be accompanied, represented and advised by representation of their own choosing. If aggrieved employees do not choose to be represented by NFFE 1658, the Union, nevertheless, may have an observer present at formal discussion between employees of the unit and management, if the employee does not object. The right of NFFE 1658 to be present shall not be permitted to impair the right of the employee to handle this grievance in his own way. With the consent of the aggrieved in such instances, a summary of the discussion or decision will be provided to NFFE 1658.

7.4 JOINT GRIEVANCE BOARD MEMBERSHIP. The employer and NFFE 1658 shall each appoint two members and two alternates to a Joint Grievance Board which shall hear disputes submitted to it in accordance with this grievance procedure:

(a) The members of the Joint Grievance Board shall organize by selecting a chairman and a secretary, which offices shall be filled and held for one year alternately by an NFFE 1658 representative and a representative of the employer.

(b) The Board shall formulate rules for the conduct of its proceedings and shall agree upon a procedure for the selection of an arbitrator in the event one may be needed.

(c) No person involved in the adjudication of a grievance referred to the Board shall participate as a member of the Board in the settlement of that grievance.

7.5 EMPLOYEE GRIEVANCE REPRESENTATIVES. Officers of NFFE 1658, grievance representatives and employees of the unit shall have access during official duty hours to all regulations and directives which are applicable to them including, but not limited to, the U.S. Civil Service Commission Federal Personnel Manual, Department of the Interior and Bureau of Indian Affairs Manuals, and all regulations and directives relating to personnel policies, practices and procedures and those relating to the conditions of employment in the unit.

7.6 GRIEVANCE PROCEDURE. The purpose of this procedure is to provide a mutually satisfactory method for the settlement of employee grievances and disputes over the interpretation and application of this agreement in specific situations, or alleged violations thereof. It is understood that this procedure may not extend to changes or proposed changes in agreements or agency policy. This grievance procedure is the exclusive procedure for employees in the representation unit.

I. Time Limit for Filing Grievances. Where a grievance arises from a specific event or instance, it must be presented within fifteen (15) calendar days of the date of the event or instance in which the grievance arises, except in cases where the employee was not aware of being aggrieved at that time. In such case, the grievance shall be filed within fifteen (15)calendar days from the date on which the employee became aware or should have become aware of being aggrieved. Extension for unusual cases may be granted.

II. Informal Complaints. The matter shall first be taken up informally by the employee with his immediate supervisor. If the employee and supervisor fail to reach a mutually agreeable solution, the employee may then elect to be accompanied by a representative of his own choosing at all future discussions i the handling of his complaint. If a mutually satisfactory agreement is not reached with the immediate supervisor, the supervisor's immediate superior shall be consulted by the parties involved in an attempt to work out a solution to the problem.

III. Formal Grievance. If the grievance is not settled within five (5) working days or if the employee is not satisfied with the decision of the immediate supervisor, he may submit through his representative (if a representative is desired), his grievance in writing to the Director of the Office in which he is employed. The written presentation must contain the following information:

(a) The identity of the aggrieved employee and and the organizational segment in which he is employed.

(b) The details of the grievance.

(c) The corrective action desired.

A. When the Director receives a written grievance from an employee or a group of employees covered by this basic agreement, he will inform NFFE 1658 that a grievance has been received and give NFFE 1658 the date and time the grievance will be discussed.

B. The Director will examine the grievance to determine if it is one excluded by 370 DM 771. 12B (such as position classification, equal opportunity, performance rating, reduction-in-force, adverse action, etc.) for which procedures of appeal other than the grievance procedure have been established. If it is so excluded, the Director will advise the employee of the procedure for processing his complaint. Otherwise he will attempt to adjudicate the grievance, and will give his decision to the employee and NFFE 1658 in writing within five (5) working days after receiving the grievance.

C. If the Director is not successful in settling the grievance to the employee's satisfaction, the employee may, through his representative (if he desires a representative) within the next five (5) working days submit his grievance directly to the Deputy Commissioner, or if he desires a hearing, he may submit it to the Joint Grievance Board.

D. The Joint Grievance Board shall meet within five (5) working days after receiving a grievance. The employee and his representative shall be allowed to appear before the Board to present the case. Appropriate representatives of the employer shall also be allowed to appear before the Board in behalf of the Bureau. The Board shall apply its best efforts to determine pertinent facts and shall attempt by majority vote to formulate a recommended settlement. The

recommendation shall be submitted to the Deputy Commissioner with copies to the employee and NFFE 1658 within ten (10) working days after the hearing; or, if no recommendation can be agreed on during this period, both parties shall be so notified.

E. Within ten (10) working days after the Deputy Commissioner receives the grievance from the employee or the recommendation from the Joint Grievance Board, the Deputy Commissioner shall inform the employee and NFFE 1658, in writing, of his decision.

F. If the employee is not satisfied with the decision of the Deputy Commissioner, he may request that his grievance be made subject to arbitration with the approval of NFFE 1658.

G. Within seven (7) calendar days from the date of receipt of the arbitration request, the parties shall meet for the purpose of endeavoring to agree on the selection of an arbitrator. If agreement cannot be reached, then either party may request the Federal Mediation and Conciliation Service to submit a list of five (5) impartial persons qualified to act as arbitrators. The parties shall meet within (3) three working days after receipt of such list. If they cannot mutually agree upon one of the listed arbitrators, then the employer and NFFE 1658 will each strike one arbitrator's name from the list of five and shall then repeat this procedure. The remaining name shall then be the duly selected arbitrator. The arbitrator shall study all records of the case and conduct such investigations as he may deem necessary. He shall then submit a settlement to the Commissioner of Indian Affairs, with copies to the employee and NFFE 1658. The arbitrator's award shall be final unless either party files an exception thereto with the Federal Labor Relations Council in accordance with its regulations. This constitutes the final disposition of the case under the authority of this basic agreement. The costs of the arbitrator shall be borne equally by the employer and NFFE 1658.

ARTICLE 8 - SUPPLEMENTAL AGREEMENTS

8.1 NEGOTIATIONS. Negotiations for supplemental agreements may be entered into any time by mutual agreement of employer and NFFE 1658. Such negotiations must be entered into if either party gives notice to the other in writing at least fifteen (15) calendar days in advance of their proposed negotiating date. The subject of the proposed negotiation shall be stated in writing with the request.

8.2 OBLIGATIONS. The parties shall proceed to negotiate supplemental agreements on matters within the scope of Executive Order 11491 which are not fully covered by this basic agreement and by way of example may include:

(a) The entire area of personnel policies, practices, and procedures appropriately subject to negotiation.

(b) Improvement programs, training programs and programs for greater participation by employees in formulating and implementing policies and procedures affecting conditions of their employment.

(c) Promoting the highest degree of efficiency in the performance of work and accomplishing the purposes of the Bureau of Indian Affairs.

(d) Safeguarding the integrity of employee's performance ratings.

(e) Rehiring practices and procedures.

(f) Incentive awards for employees.

(g) Promotion and detail practices and procedures.

(h) Annual and sick leave procedures.

(i) Dues deductions.

8.3 APPROVAL OF SUPPLEMENTAL AGREEMENTS. Supplemental agreements shall be signed by the members of both negotiating committees and, unless otherwise specified therein, shall become effective on the first day of the first pay period following approval by the Deputy Commissioner and shall remain effective concurrent with the basic agreement.

ARTICLE 14 - EQUAL OPPORTUNITY

14.1 EQUAL OPPORTUNITY. The employer and NFFE 1658 agree to cooperate in providing equal opportunity for all qualified persons, to prohibit discrimination because of age, sex,race, creed, color, or national origin, and to promote the full realization or equal opportunity through a positive and continuing effort. The parties also agree to observe and recognize the impact of Federal Laws unique to Indians and applicable to the Bureau, which affect Bureau employment practices and require that preference in appointments to vacancies be extended to persons of one-fourth or more degree Indian blood who meet the minimum qualifications for the position to be filled.

14.2 NON-DISCRIMINATION. In the policies and practices of NFFE 1658 there shall continue to be no discrimination against any employee because of age, sex, race, creed, color, or national origin, and NFFE 1658 invites all employees to share in the full benefits of employee organization membership.

14.3 FUNCTIONS. Through procedures established by the Joint Advisory Work Committee, each party agrees to advise the other of equal opportunity problems of which they are aware. The BIA and NFFE 1658 will jointly seek solutions to such problems through cooperative efforts.

ARTICLE 18 - HOURS OF WORK, BASIC WORKWEEK, AND OVERTIME WORK

18.1 HOURS OF WORK AND WORKWEEK. Employer and NFFE 1658 are in agreement that the basic workweek and the basic workday are established in accord with applicable Department procedures. No change to the hours of work shall be recommended without prior consultation with the BIA employees and NFFE 1658.

18.2 CHANGE IN HOURS. The days and hours of employees' basic workweeks may be changed provided the employee receives as much advance as possible, normally one week.

18.3 OVERTIME. For the purpose of this agreement, overtime consists of two distinct types: scheduled overtime and irregular or occasional overtime.

(a) Scheduled overtime is work scheduled by management prior to the beginning of the administrative workweek in which it occurs.

(b) Irregular or occasional overtime is work determined by management to be necessary and which was not scheduled prior to the beginning of the administrative workweek in which it occurs.

18.4 ASSIGNMENT OF OVERTIME. Overtime will be distributed fairly among qualified employees within the organizational unit.

The investigation showed that in March 1975 a Management Analyst position was advertised. Both Le Croix and Poleahla applied and both were ranked well qualified for the position. Le Croix was allegedly advised by several unnamed fellow employees that a "place was being made" for Poleahla and that she as a woman would not be promoted. Poleahla was, in fact, selected. Le Croix was also allegedly informed by two unnamed employees that Poleahla's former supervisor had made several negative comments about Poleahla to the selecting official. The Union filed grievances on behalf of Le Croix and Poleahla.

The Union's position is that the grievances are subject to the grievance and arbitration procedures contained in the parties' contract.

The Activity disputes this, contending that insofar as Le Croix's grievance involves a complaint of discrimination, it is subject to a statutory grievance procedure. Also, the Activity contends that the grievances do not contain any specificity as to questions concerning the interpretation or application of the contract. Moreover, the Activity maintains that the promotion action met Indian preference requirements.

I find that those portions of the Le Croix grievance which deal with implementation of the EEO laws, affirmative action plan, upward mobility program and career development program are essentially complaints of racial and sexual discrimination. As such those portions of her grievance are subject to a statutory appeals procedure. As for those portions of the grievance centering on the alleged lack of an operational training program, I find no substantive contractual provision relating to training. (The reference to training in Article 8 merely sets forth training programs as permissible subject for a supplemental agreement. However, the evidence submitted indicates that no such supplemental agreement exists.)

With respect to Poleahla's grievance, I also find that there are no substantive provisions of the contract which cover his grievance. In this respect, I note that there are no provisions in the contract covering evaluations, merit promotion, leave usage, employee attendance or anything else upon which the grievance could hinge.

In summary, I find that those portions of the Le Croix grievance centering on EEO, affirmative action, upward mobility and career development are subject to statutory appeals procedure and thus by virtue of Section 13(a) of Executive Order 11491, as amended, not subject to the grievance or arbitration procedures. I also find that the Poleahla grievance does not involve the interpretation and application of the negotiated agreement and is neither grievable nor arbitrable.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other party. A statement of service should

accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary no later than close of business July 2, 1976.

DATED: June 17, 1976

Frank P. Willette, Acting Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-21-76

798

Mr. Billy B. Sweigart
Steward
Federal Employees Metal Trades Council,
Metal Trades Department, AFL-CIO
P. O. Box 2195
Vallejo, California 94592

Re: Mare Island Naval Shipyard
Vallejo, California
Case No. 70-5192

Dear Mr. Sweigart:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges a violation of Section 19(a)(1) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

July 19, 1976

Mr. Billy B. Sweigart
Steward, Federal Employees
Metal Trades Council
P. O. Box 2195
Vallejo, CA 94592

Re Mare Island Naval Shipyard -
FEMTC of Vallejo
Case No. 70-5192

Dear Mr. Sweigart:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The instant complaint alleges that the Respondent violated Section 19(a)(1) and (4) of the Order by not selecting Billy Sweigart, a steward of the Complainant, to participate in the transfer of his co-workers from Shop 31 to Shop 36 of the Respondent. This transfer apparently began on February 1, 1976, and, on February 3, 1976, a meeting was conducted by the Respondent in order to answer questions concerning the transfer raised by affected employees. This meeting was conducted by Cecil Rolls, the Group Superintendent of several shops, including Shop 36. At some point during the meeting, Sweigart asked several questions concerning the reasons why employees were selected for the transfer generally, and the reason why he himself had not been selected. Rolls then apparently answered to the effect that Sweigart had not been selected because he had indicated that he did not want to participate in the transfer.

The Complainant contends, in effect, that Rolls' reply indicated that he had not selected Sweigart for the transfer because Sweigart had previously filed an unfair labor practice charge in another case concerning the transfer, and, additionally, had solicited employee signatures for a statement opposing the transfer. The Complainant also points out that Sweigart had previously indicated to another official of the Respondent that he desired to participate in the transfer. Further, the Complainant contends that Rolls singled out Sweigart for abusive treatment at the meeting in retaliation for his activities on behalf of the Complainant.

However, investigation revealed, as evidenced in the signed statements of witnesses (copies of which have already been forwarded to the parties), that Rolls did not participate in the process of selecting specific individuals for the transfer, and that, further, the officials participating in this selection process were responsible to a group superintendent other than Rolls. Moreover, the mere coincidence that Sweigart's union activities in opposition to the transfer, including the filing of an unfair labor practice charge, were followed after a short period of time by the decision not to include Sweigart in the transfer does not by itself, without any supporting evidence which the investigation did not uncover, constitute a reasonable basis for the complaint.

Further, the investigation also revealed that Rolls' allegedly violative comments at the meeting of February 3, 1976, only indicated that Rolls believed that Sweigart preferred not to participate in the transfer, and not that Rolls took issue with Sweigart's union activities. Further, the fact that Sweigart had indicated previously to a different official of the Respondent that he desired to participate in the transfer does not require a contrary conclusion.

I am, therefore, dismissing the instant complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on August 3, 1976.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-21-76

799

Mr. Timothy Loney
Regional Labor Relations Officer
General Services Administration
525 Market Street
San Francisco, California 94105

Re: General Services Administration
Region 9
San Francisco, California
Case No. 70-5123

Dear Mr. Loney:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's Report and Findings on Grievability in the above-named case.

Under all of the circumstances of this case, and contrary to the Regional Administrator, I find that the instant Application for Decision on Grievability or Arbitrability should be dismissed. It has previously been established that, when arbitration is the final appellate step in a negotiated grievance procedure, arbitration must have been invoked, and a final written rejection of the request for arbitration by the other party to the agreement must have been received prior to the submission of an application for determination of grievability or arbitrability. Thus, in my view, a party must exhaust its contractual remedies before seeking the intervention of the Assistant Secretary. (See Report On A Ruling No. 56, copy attached.)

Accordingly, the request for review is granted, and the Application for Decision on Grievability or Arbitrability is hereby dismissed.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

GENERAL SERVICES ADMINISTRATION REGION 9 SAN FRANCISCO, CALIFORNIA -ACTIVITY	)	
-AND-	)	CASE NO. 70-5123
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2126, AFL-CIO -APPLICANT	)	

REPORT AND FINDINGS

ON

GRIEVABILITY

Upon an application for decision on grievability or arbitrability duly filed under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of the matter has been conducted by the Area Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, the undersigned finds and concludes as follows:

The Applicant is the exclusive representative of three collective bargaining units of employees of the General Services Administration, herein called the Activity, in San Francisco Bay Area. Each of these bargaining units excludes supervisors, management officials, employees engaged in Federal Personnel work in other than a purely clerical capacity, guards and Federal protective officers, confidential secretaries, and any other employees who meet the definitions of excluded employees stated in Section 10(b) of the Order. The parties executed a collective bargaining agreement on December 19, 1973, covering the employees in all three units. The agreement has continued in effect at all times relevant to the instant Application.

Investigation revealed that on August 8, 1975, the Applicant received nine grievances from employees it exclusively represents in the Construction Management Division, herein referred to as CMD. The nine grievances were filed pursuant to the parties negotiated grievance procedure and addressed the employees' objections to a proposed reallocation of space among the CMD. Upon receipt of the grievances, the Applicant's President, Lila Bell, contacted the office of the employee who is the Steward responsible for servicing the CMD, George Noller, and arranged for Noller to meet with her in her office. Noller did in fact meet with Bell in her office for approximately one and a half hours on August 8, 1975.

On August 12, 1975, Noller's supervisor served a "Record of Infraction" upon Noller. The Record of Infraction stated the Activity's understanding of the incident which transpired on August 8, 1975, and contended that Noller had indicated that he had not met with Bell in his capacity as a union steward, but rather to work on one of his "old grievances". Noller was denied administrative leave for the period of time he met with Bell on August 8, 1976.

On September 3, 1975, the Activity served upon Noller a "Notice of Proposed Suspension". The Notice proposed that Noller be suspended from duty and pay for one day for failure to follow instructions and for unauthorized absence on August 8, 1975. Specifically, the September 3, 1975, Notice stated that Noller had previously been informed by his supervisor that official time was permitted only for presentation of an agency grievance, not for its preparation; Noller reported that he met with Bell on August 8, 1975, on official time to discuss one of his old grievances; therefore he failed to adhere to his supervisor's instruction that official time was not permitted for the preparation of an agency grievance. Additionally, the Notice stated that Noller neither requested permission in advance to meet with Bell nor notified a supervisor of his absence, thereby rendering him absent without authorization.

Bell, as Noller's representative, responded to the Notice of Proposed Suspension on September 6, 1975. The response argued that on August 8, 1975, she had contacted the employee acting for the supervisor in his absence regarding the meeting with Noller about the CMD grievances, that Noller had the right in accordance with Article VII, Section 7(e) of the negotiated agreement to be absent from his work station to discuss these grievances, and that Noller had fulfilled the requirements of Article VII, Section 7 when he met with Bell on August 8.

Later in September Noller received a final decision stating he would be suspended for one day and that he could contest the propriety of the suspension by grieving under the GSA grievance procedure or appealing to the Civil Service Commission on certain limited grounds.

On October 6, 1975, the Applicant initiated the instant grievance at Step B under the negotiated grievance procedure. The grievance alleged that Article VII, Section 7 of the negotiated agreement and specifically Section 7(e) had been violated. Article VII, Section 7 of the negotiated agreement reads:

> "Absence from Work Station During Duty Hours by Union Officers, Stewards, and Representatives. Union officers, stewards, and representatives may leave their work station during regular duty hours for reasonable periods of time to perform necessary Union representational and consultation duties, in accordance with this agreement.
>
> a. First obtain supervisor's permission to leave, which will be granted unless the work situation demands otherwise.
>
> b. Before contacting another employee of the unit, obtain permission from that employee's supervisor.
>
> c. Immediately advise his/her supervisor at the time of return to the work station and assigned duties.
>
> d. Time spent in handling these duties and responsibilities shall be confined within reasonable limits and will be recorded by the Union representative on a time sheet provided by the supervisor. This time will not be charged to leave.
>
> e. All officers, Chief Steward and Stewards may receive and investigate complaints or grievances from the employees of their respective Local.

> f. The Union recognizes its responsibility to insure that its representatives do not abuse this authority by unduly absenting themselves from their assigned work areas, and that they will make every effort to perform representational functions in a proper and expeditious manner."

The Activity denied the grievance October 15, 1975. In its response, the Activity contended that Noller stated he met Bell on August 8, 1975, to discuss one of his old grievances, which the Activity interpreted to be a grievance under the agency grievance procedure.. Since Article VII, Section 7 of the agreement did not pertain to agency grievances, the Activity contended that the resulting disciplinary action was precluded from being processed under the negotiated agreement. Additionally, the Activity stated that even if Noller had been participating in a matter governed by the negotiated agreement during the time in question, neither Article VII, Section 7(e) nor any other portion of the agreement would have been violated since Noller did not have proper clearance prior to leaving the worksite.

The Applicant advanced the grievance to Step C October 20, 1975. On October 31, 1975, the Activity denied Step C of the grievance on essentially the same grounds as stated above. On November 25, 1975, the Applicant forwarded the grievance to Step D. The Activity reiterated its rejection of the grievance on November 26, 1975. Step D is the final step in the negotiated grievance procedure before arbitration.

The Activity informed the Applicant on December 4, 1975, of its position that the matter could be pursued in the arbitration forum. The Applicant responded on December 7, 1975, that the arbitrability of the grievance was not at issue; and that the unresolved issue was whether the grievance was grievable under the parties' negotiated procedure. The instant Application requesting a decision on whether the grievance was grievable according to the parties' negotiated agreement was filed on January 15, 1976.

It is the Applicant's position that the disciplinary action and the disapproval of administrative leave directed against Noller is grievable under the parties' negotiated grievance procedure since Noller was processing grievances filed under the negotiated agreement at the time of the incident in question.

It is the position of the Activity that the instant Application should be dismissed because it is procedurally deficient and because the questions of grievability and arbitrability are moot.

Specifically, the Activity argues that the Application is procedurally defective because Item 3(d) of the Application cites sections of the negotiated agreement pertinent to the question of grievability that were not cited by the Applicant as being at issue during the processing of the grievance.

Further, although the Activity acknowledges that time spent by stewards working on grievances under the negotiated procedure is a matter covered by the agreement, the Activity contends that the grievability determination in this case must be made in conjunction with a finding on the facts surrounding the statement allegedly made by Mr. Noller to his supervisor at the time of the incident and reiterated during the processing of the grievance rather than solely upon the activity Noller actually was engaged in during the time for which he was disciplined.

In addition, the Activity argues that regardless of the grievability determination, the question of grievability is moot because the Activity rendered a response to the grievance at each step of the negotiated grievance procedure, did not arrest the processing of the grievance at any point, and never rejected the grievance as required by Section 205.2(b) of the Assistant Secretary's Regulations.

Finally, the Activity claims any question of arbitrability is moot since the Applicant neither attempted to advance the instant grievance to arbitration nor submitted the question to the Department of Labor.

Contrary to the Activity, the undersigned does not agree that the Application is procedurally defective because Item 3D of the Application cites sections of the Agreement that were not cited by the Applicant as being at issue during the processing of the grievance. It appears that the Activity incorrectly assumes that the items identified in 3D of the Application as being pertinent to the question of grievability are in fact the items that the Applicant is alleging in its grievance were violated.

In fact, item 3D of the Application simply serves to designate the portions of the negotiated agreement the Applicant believes to be relevant to the question of whether or not the grievance is grievable under the parties' negotiated agreement. The sections of the negotiated agreement which the Applicant had claimed were violated in the grievance are identified elsewhere in the Application.

Second, the undersigned does not concur with the Activity's reasoning that the grievability decision must be made in conjunction with a finding on the facts surrounding the statement Noller allegedly made to his supervisor that he was involved in an activity not governed by the negotiated agreement during the time for which he was disciplined.

The Applicant has consistently maintained that Noller was working on grievances under the negotiated procedure during the period for which he was disciplined. It has provided a statement from Noller which unequivocally states he and Bell were discussing the grievances filed by members of CMD during the time for which he was disciplined and were not discussing any agency grievances. Additionally, the Applicant has supplied copies of the nine grievances dated August 8, 1975, from the CMD employees which were received by the Applicant for processing under the negotiated grievance procedure.

The Activity has not submitted any evidence to indicate that Noller was participating in any activity not covered by the negotiated agreement during the period of time for which he was disciplined.

Assuming arguendo that Noller falsely informed his supervisor as to the reason for his August 8, 1975, absence, it is clear that as early as September 6, 1975, the date on which the Applicant responded to the Notice of Proposed Suspension, the Activity was aware of the contention by the Applicant that Noller had been engaged in a conference over grievances arising under the negotiated agreement. Or, to put it more precisely, the Activity was aware of the contention that Noller had been performing representational functions during duty hours as permitted by Article VII, Section 7 of the agreement.

It is for the Activity to determine whether, when faced with such a contention, that claim warrants investigation or, rather, it should maintain its initial grounds for the disciplinary action.

However, when the gravamen of a grievance lies in the negotiated agreement, a party to that agreement cannot frustrate the vindication of rights arising under that agreement by a claim that it relied on inaccurate or false information given it by the other party to the dispute. This is not to say that an activity is without redress when it is deliberately misinformed by an employee on a matter of legitimate interest; however, that redress cannot include a denial of rights arising under a negotiated agreement or the Executive Order.

In this regard, see NLRB v. Burnup & Sims, Inc., 379 U.S. 21 where, in the context of a private sector proceeding, the Court held that, in substance, it is no defense to assert a good faith belief that certain misconduct occurred in the context of protected activity when, in fact, such misconduct did not occur, since the controlling consideration must be the uninhibited exercise of the protected activity. Justice Harlan, concurring in part and dissenting in part, would, in effect, limit liability to the time commencing after the party learned, or should have learned, of his mistake.

In the opinion of the undersigned, the Court's rationale in Burnup & Sims, Inc. supra has application to the instant matter.

As was the exercise of protected activity in that case, the controlling consideration in the instant matter is set forth in Article III of the negotiated agreement where it states, in pertinent part:

> It is the intent and purpose of the Employer and the Union that this Agreement will accomplish the following objectives:
>
> . . .
>
> e. To facilitate the adjustment of grievances, disputes, and differences, related to matters covered by this Agreement.

Such resolution of disputes cannot be denied by an assertion that the subject matter of the dispute does not arise under the agreement, notwithstanding a good faith but mistaken belief in that position, when the dispute, in fact, involves matters covered by the agreement.

Therefore, the undersigned concludes that Noller was in fact processing the nine CMD grievances filed pursuant to the negotiated grievance procedure during the period of time for which he was later disciplined. The processing of grievances under the negotiated grievance procedure is an activity encompassed by Article VII of the parties' negotiated agreement. Therefore, it is concluded that the grievance is on a matter subject to the grievance procedure of the parties' agreement.

The undersigned rejects the Activity's contention that the question of grievability is moot because it offered a response to the grievance at each step and never irrevocably rejected the grievability of the grievance. In this regard, although the Activity offered a response to the grievance at each

step of the process and did not arrest the grievance at any step, each step of the grievance procedure was necessarily restrained by the Activity's repeated assertion of the position that the grievance was not grievable because it did not involve an issue covered by the negotiated agreement. Because of this ever-present, unresolved question of grievability, the issues of the grievance were never framed within the context of the agreement provisions and the Activity's position on the discipline was never presented in relation to the terms of the agreement. Consequently, the grievance was never substantively pursued through the negotiated procedure.

Additionally, although the Activity never unequivocally rejected the grievability of the grievance, neither 13(d) 1/ of the Order nor Section 205.2(b) of the Regulations 2/ require a final rejection before an application may be filed. In this regard, once a question of grievability has been raised by a party, an Application for a decision on grievability is not precluded from consideration by the Assistant Secretary on the ground that the rejection of the grievance is not a final rejection or in a situation where the merits of the grievance have been only superficially addressed. Noting particularly that the instant Application was filed within 60 days of the Activity's rejection of Step D of the grievance, it is concluded that the Application is not defective and the question of grievability is not moot.

Further, since the undersigned has determined that Noller was participating in an activity covered by the negotiated agreement during the time for which he was disciplined, and that the grievance is on an issue which is grievable under the parties' negotiated grievance procedure, it would appear that the parties should return to an appropriate step of their negotiated grievance procedure with the understanding that the issue in dispute is one which is covered under their negotiated agreement. If the parties are able to reach agreement on the appropriate step of the grievance procedure to return to, they may do so. Absent such agreement, it is concluded that the parties should return to the first step of their negotiated grievance procedure.

Finally, in agreement with the Activity, the undersigned agrees that the question of arbitrability is moot at this point since is has not been raised.

1/ Section 13(d) of the Order reads, in part, "Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Assistant Secretary for decision."

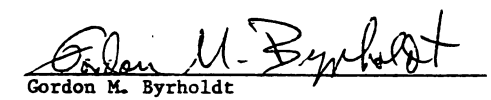
2/ Section 205.2(b) of the Assistant Secretary's Regulations reads: "Where a grievance does not concern questions as to the applicability of a statutory appeal procedure, an application for a decision by the Assistant Secretary as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, must be filed within sixty (60) days after service on the applicant of a written rejection of its grievance on the grounds that the matter is not subject to the grievance procedure in the existing agreement, or is not subject to arbitration under that agreement: Provided, however, that such prescribed sixty (60) day period for filing an application shall not begin to run unless such rejection is expressly designated in writing as a final rejection."

Accordingly, in view of the foregoing, the undersigned finds that the grievance which is the subject of the instant Application arises under the negotiated agreement and, further, directs the parties to process this grievance through the negotiated grievance or arbitration procedure.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on June 29, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review, is not filed the parties shall notify the Regional Administrator for Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith.

LABOR-MANAGEMENT SERVICES ADMINISTRATION



Gordon M. Byrholdt
Regional Administrator
San Francisco Region
9061 Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: June 14, 1976

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-21-76

Mr. James R. Purdy
Director
Veterans Administration
Regional Office
20 Washington Place
Newark, New Jersey 07102

800

Re: Veterans Administration
Regional Office
Newark, New Jersey
Case No. 32-4340(RO)

Dear Mr. Purdy:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's Report and Findings on Objections in the subject case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the election held on April 8, 1976, should be set aside and a new election held.

Accordingly, and noting that matters raised for the first time in your request for review (i.e., the deposition of Mrs. Geban), will not be considered by the Assistant Secretary (see Report On A Ruling No. 46, copy attached), your request for review seeking reversal of the Regional Administrator's Report and Findings on Objections is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

Veterans Administration
Regional Office
Newark, New Jersey

Activity

and

American Federation of Government Employees, AFL-CIO, Local 2442

Petitioner

and

National Federation of Federal Employees (IND), Local 967

Intervenor

CASE NO. 32-4340(RO)

REPORT AND FINDINGS ON OBJECTIONS

In accordance with the provisions of a Consent Election Agreement for a runoff election approved on March 19, 1976, a runoff election by secret ballot was conducted under the supervision of the Area Administrator, Newark, New Jersey, on April 8, 1976. The results of the runoff election as set forth on the Tally of Ballots are as follows:

Approximate number of eligible voters	335
Void Ballots	6
Votes cast for NFFE Local 967	120
Votes cast for AFGE Local 2442	138
Valid Votes Counted	258
Challenged Ballots	0

A majority of the valid votes counted has been cast for AFGE Local 2442.

Timely objections to conduct improperly affecting the results of the runoff election were filed on April 13, 1976 by NFFE in accordance with Section 202.20(b) of the Assistant Secretary's Regulations. The objections are attached hereto as APPENDIX A.

On April 23, 1976, NFFE timely filed a more extensive statement of its objections, attached hereto as APPENDIX B, together with voluminous evidentiary material not attached but referred to below.

OBJECTION NO. 1

Intervenor alleges Petitioner violated the pre-election agreement by campaigning in the cafeteria on the day before the election prior to 12:00 noon. In addition, Intervenor maintains Petitioner's representatives distributed literature offering free coffee and doughnuts, the effect of such literature being to encourage workers to leave their work site during their tour of duty. According to Intervenor, electioneering in the cafeteria was to take place from 12:00noon to 1:30PM; however, representatives of Petitioner were electioneering in the cafeteria prior to 12:00 noon.

Examination of the agreement discloses that it did not prohibit campaigning in the cafeteria prior to 12:00 noon but merely delineated certain time and areas during which campaigning could take place. Moreover, the Assistant Secretary will not undertake to police such side agreements and a breach thereof, absent evidence that the conduct had an independent, improper affect on the conduct of the election or the results of the election.1/

No evidence has been adduced which would form a basis to conclude that such campaigning and/or the free offer of coffee and doughnuts was improper. Such action by Petitioner was nothing more than an attempt to use legitimate avenues of appeal to make itself more attractive to employees.

Accordingly, I conclude that Objection No. 1 is without merit.

OBJECTION NO. 2

The objection, as alleged by the Intervenor, is "Literature indicating Management participation".

According to the Intervenor, Petitioner distributed a campaign flyer which listed the name of a supervisor as a member of a "Committee For AFGE Victory at VARO". A copy of this campaign flyer is attached as APPENDIX C. The campaign flyer consists of a printed campaign message printed beneath Petitioner's logo followed by the printed names of several AFGE past and present officers. Directly beneath this listing, the following appears:

"MAGGIE GEBAN
COMMITTEE MEMBER"

1/ Assistant Secretary Report on Rulings, Number 20

Intervenor contends that Geban is a supervisor and her signature on Petitioner's campaign literature was sponsored by management. Petitioner does not contest the supervisory status of Geban, however, it maintains that Geban did not pressure anyone to vote for Petitioner.2/

Evidence adduced discloses that Geban is an employee in the Administrative Division and supervises two GS-5 supervisors who are directly responsible to Geban who is a Grade GS-7. Geban's immediate supervisor is the Assistant Division Chief. There are 22 file clerks and 2 records disposal clerks in the Administrative Division. Geban approves leave, evaluates the performance of employees within the Administrative Division, schedules work and recommends employees for promotion.3/

Based on the foregoing, I conclude that Geban is a supervisor within the meaning of the Order.

In A/SLMR No. 349, Antilles Consolidated Schools, Roosevelt Roads, Ceiba, Puerto Rico, the Assistant Secretary stated: "(I)t is clearly established policy, as reflected in the preamble of the Order and in Section 1(a) that agency or activity management must maintain a posture of neutrality in any representation election campaign".

The campaign flyer is clearly a partisan statement supporting one labor organization over another as evidenced by the following statement:

"IT IS IMPORTANT THAT AFGE HOLD ITS RANKS TOGETHER AND GET OUT THE VOTE. REMEMBER, IF YOU INDEED WANT A UNION THAT REPRESENTS ALL THE EMPLOYEES, ITS AFGE OR THE DO NOTHING GROUP AGAIN."

Having found that Geban is a supervisor, I conclude that the listing of her name as part of the "Committee For AFGE Victory" constitutes objectionable conduct which improperly affected the results of the election.4/

2/ The Activity did not submit a formal written response to the objections, but it denies having knowledge of Geban's activities with respect to the campaign literature or any other aspects of Petitioner's campaign.

3/ Geban is listed on the eligibility list as excluded from voting because of her supervisory status.

4/ In this respect, I note that the campaign flyer's distribution was not limited solely to the Administrative Section.

OBJECTION NO. 3

Intervenor alleges that electioneering took place during duty hours.

Intervenor submitted no evidence in support of this objection other than a signed statement from an employee that Maggie Geban was observed in the file unit located in the basement of the Veterans Administration Regional Office Building wearing an AFGE button, red letters on a white background, approximately 1½ inches in diameter. No evidence has been adduced that the inscription on the button was campaign propaganda. Nor has any evidence been adduced as to when the button was worn by Geban or the frequency within which it was worn.5/

Based upon the foregoing, I conclude that the Intervenor has failed to sustain its burden of proof to establish a reasonable basis that such conduct may have improperly affected the results of the election.

Accordingly, Objection No. 3 is found to have no merit.

Having found that Objection No. 2 has merit, the parties are advised that the runoff election held on March 19, 1976 is set aside and a rerun election will be conducted as soon as possible, but not later than 30 days from the date of this Report, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business July 19, 1976.

LABOR MANAGEMENT SERVICES ADMINISTRATION

DATED: July 1, 1976

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

ATT: APP. A, B, and C

5/ This is not to say that under appropriate circumstances the wearing of such a button during a representation campaign would not be improper conduct affecting an election.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

10-22-76

801

Mr. Jack Files
Route 1
Oakman, Alabama 35579

Re: Local 2206, American Federation of Government Employees, AFL-CIO
Birmingham, Alabama
Case No. 40-7025(CO)

Dear Mr. Files:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(b)(1) of Executive Order 11491, as amended.

Under all of the circumstances herein, I find that a reasonable basis for the subject complaint has been established. Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in this matter, is granted, and the instant case is hereby remanded to the Regional Administrator, who is directed, absent settlement, to issue a notice of hearing in this matter.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

August 10, 1976 ATLANTA, GEORGIA 30309

Mr. Jack Files
Route 1
Oakman, Alabama 35579

RE: Local 2206, American Federation of
Government Employees, AFL-CIO
Birmingham, Alabama
Case Number 40-7025(CO)

Dear Mr. Files:

The above captioned case alleging violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as evidence adduced has failed to establish a reasonable basis for the complaint.

The complaint alleges that the Executive Vice President of Respondent, Windsor Heflin, threatened to expel you from Respondent for two reasons: (1) for having filed a Section 18 complaint against Respondent's President and (2) for having participated in the Respondent's meeting of April 5, 1976.

According to our records you filed a complaint under Section 18 against James M. Canter, President of Local 2206, AFL-CIO, on February 9, 1976. The Acting Regional Administrator dismissed the complaint (Case No. 40-06864) on July 21, 1976.

Investigation discloses that you, as a member in good standing of the Respondent, attended Respondent's regular monthly meeting on April 5, 1976, at which time you presented a motion to the effect that Respondent accept membership applications for certain former members who had been expelled. Your motion was ruled out of order and your appeals were denied by Windsor Heflin.

After the meeting, Mr. Heflin became involved in a heated verbal exchange with several members. During the exchange, Heflin is alleged to have told some of the members that they should tell you that within two months you would be out of the local. Mr. Heflin has denied that he threatened to expel you or any other member.

No evidence has been adduced that Respondent or Heflin has publicized this threat or that steps have been initiated to expel you or anyone else because of your vigorous and well known opposition to the leadership of Respondent. Even if Heflin made the statement attributed to him, in the absence of evidence that Respondent engaged in further activities which inhibited you or other employees in the exercise of your right to criticize the Respondent, its officers or the manner in which the Respondent conducts its meetings, you have not furnished sufficient evidence to justify the issuance of notice of hearing.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Managment Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business August 25, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services Administration

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

OCT 26 1976

802

Ms. Delores M. Hickman
271 Palmetto Avenue
Merritt Island, Florida 32952

Re: NASA, John F. Kennedy Space Center
Kennedy Space Center, Flordia
Case No. 42-3378(GA)

Dear Ms. Hickman:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on September 8, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on September 29, 1976. Your request for review postmarked on September 28, 1976, was received by the Assistant Secretary subsequent to September 29, 1976.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300
ATLANTA, GEORGIA 30309

September 8, 1976

Ms. Dolores M. Hickman
2685 U.S. 1 North
Miami, Florida 32754

Re: NASA, John F. Kennedy Space Center
Kennedy Space Center, Florida
Case No. 42-3378(GA)

Dear Ms. Hickman:

The above captioned case, initiated by the filing of an Application for Decision on Grievability under Section 6(a)(5) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as no grievance has been filed under the negotiated grievance procedure and therefore there has been no final written rejection of that grievance.

Investigation discloses that on April 9, 1976, you filed a written formal grievance under the agency's grievance procedure. The Activity rejected the grievance. You resubmitted the grievance three times. After you submitted the grievance on April 22, 1976, the Activity wrote to you pointing out that, as a member of the bargaining unit covered by exclusive recognition, "your recourse is to continue your grievance to the formal level of the AFGE grievance procedure." The Activity's last rejection of your grievance filed under the agency grievance procedure was on May 4, 1976.

The Activity takes the position that your grievance is on a matter subject to the negotiated grievance procedure and is not subject to the agency's grievance procedure. It points out that Article XX, Section 1 of the negotiated agreement titled Placement and Promotion incorporates the NASA Merit Promotion Plan as an integral part of the negotiated agreement. As your grievance concerns, in major part, your application for promotion under the NASA Merit Promotion Plan, the Activity contends that it is required to offer to process your grievance under the grievance procedure in the negotiated grievance procedure rather than under the agency grievance procedure.

Section 205.2(b) of the Regulations provides in pertinent part:

> Where a grievance does not concern questions as to the applicability of a statutory appeal procedure, an application for a decision by the Assistant Secretary as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement . . . must be filed within (60) days after service on the applicant of a written rejection of its grievance on the grounds that the matter is not subject to the grievance procedure in the existing agreement . . . (emphasis supplied)

No grievance having been filed under the negotiated grievance procedure, the Activity could not have and has not served on you a written final rejection of a grievance filed under the negotiated grievance procedure.

I am, therefore, dismissing the application in this matter.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business September 23, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services Administration

cc: NASA, John F. Kennedy Space Center
Kennedy Space Center, Florida 32899
ATTN: Sharinne S. Devries
VL-QAL

Mary Lou Barger, President
AFGE, Local 2498
Post Office Box 21021
Kennedy Space Center, Florida 32815

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

11-5-76

803

Mrs. Marie Brogan
President, National Federation of
Federal Employees, Local 1001
P. O. Box 195
Vandenberg Air Force Base, California 93437

Re: Vandenberg Air Force Base,
California
Case No. 72-5770

Dear Mrs. Brogan:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of those portions of the instant complaint which allege violations of Section 19(a)(2) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that the Section 19(a)(2) allegation was not filed timely in accordance with the requirements of Section 203.2 of the Regulations of the Assistant Secretary. However, contrary to the Regional Administrator, I find that a reasonable basis for the allegation that the Respondent unilaterally changed its past practice with regard to official time for representational duties has been established. Accordingly, under all of the circumstances herein, your request for review, seeking reversal of the Regional Administrator's dismissal of the Section 19(a)(2) and (6) portions of the complaint, is denied with respect to the Section 19(a)(2) portion of the complaint and is granted with respect to the Section 19(a)(6) portion of the complaint, and the case is remanded to the Regional Administrator for further proceedings with respect to the Section 19(a)(1) and (6) allegations of the complaint.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

April 13, 1976

Mrs. Marie C. Brogan
President, NFFE Local 1001
P. O. Box 1935
Vandenberg AFB, CA 93437

Re: Vandenberg AFB -
NFFE Local 1001
Case No. 72-5710

Dear Mrs. Brogan:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. The suggested guidelines issued by Mr. Hunt regarding the granting of official time to union representatives is considered to be intermanagement correspondence and there is no indication that the guidelines were meant to be used to bypass the exclusive representative since Mr. Hunt requested to meet with you in this regard. Moreover, it would appear that resolution of this dispute should be made through the negotiated grievance procedure since it involves varying interpretations of the agreement. See Assistant Secretary Rule No. 49.

It is further noted that the allegations concerning Respondent bypassing Complainant by meeting with unit members involve matters which occurred more than six months prior to the filing of the charge and, therefore, cannot be raised in this proceeding. In these circumstances, and since no evidence was submitted with respect to the 19(a)(2) allegation or the aforesaid meetings with unit members, it is concluded that further proceedings are unwarranted.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210 not later than the close of business on April 28, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

NOV 9 1976

804

Mr. Thaddeus Rojek
Acting Chief Counsel
Department of Treasury
U.S. Customs Service
Washington, D.C. 20229

Re: National Treasury Employees
Union (NTEU)
Washington, D.C.
Case No. 50-13181(CO)

Dear Mr. Rojek:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective, as it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on October 12, 1976. As you were advised therein, a request for review of that decision, to be timely, had to be received by the Assistant Secretary no later than the close of business on October 27, 1976. Your request for review was delivered to my office on October 28, 1976.

I have considered carefully the circumstances of your attempts to effectuate earlier filing, described in your letter to me, dated October 28, 1976. I see no reason to depart from my rule that, to be timely, a request for review must be received by date due. Accordingly, since your request for review was filed untimely and no request for an extension of time was submitted or granted, the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

NATIONAL TREASURY EMPLOYEES UNION (NTEU),
WASHINGTON, D. C.,

Respondent

and **Case No. 50-13181(CO)**

DEPARTMENT OF THE TREASURY,
U. S. CUSTOMS SERVICE, CHICAGO
REGION, CHICAGO, ILLINOIS,

Complainant

The Complaint in the above-captioned case was filed on September 29, 1976, in the Office of the Chicago Area Administrator. It alleges a violation of Section 19(b)(4) of Executive Order 11491, as amended. The Complaint has been investigated and carefully considered. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the Complaint has not been established, and I shall therefore dismiss the Complaint in this case.

It is alleged that the Respondent violated Section 19(b)(4) of the Order when it issued a letter to its members which Complainant construes as a call for a concerted work slowdown. The letter, dated September 22, 1976, states, inter alia, "in order to make management realize the consequences of their action I am asking each employee of Region IX to withdraw from the Savings Bond program and Combined Federal Campaign and to stop using your privately-owned car on government business."

The Complainant submitted statistical evidence that it has relied in the past and does currently rely extensively on the use of privately-owned vehicles by its employees in accomplishing mobile assignments. The assignments are given by senior Customs Inspectors who head each of the duty stations or substations where Customs Inspectors are normally dispatched. The investigation disclosed no basis in law or regulation that would require the use of privately-owned vehicles as a condition of employment in the performance of work assignments. Supervisors have been advised not to order or direct employees to use private vehicles in the performance of their work assignments. A review of the employees' position descriptions shows no requirement in the job duties for the use of a privately-owned vehicle in accomplishing the Complainant's work assignments. The Complainant did submit

the results of a survey conducted in May of 1975 for inspectors and warehouse officers assigned at stations other than O'Hare covering the use of their personally-owned vehicles on official business. A majority of those surveyed elected to use their own vehicles with certain qualifications. The Complainant does not contend that the employees' election to use a personally-owned vehicle for official business enforceably binds the employee to carry out his or her election. From the evidence submitted, it seems that the use of a privately-owned vehicle by Customs employees in carrying out their assignments is as much for the convenience for the employee as it is for the Government and is not a mandatory condition of employment. Further, the Complainant submits no convincing evidence to show that alternative means of transportation such as Government-owned vehicles, public transportation systems, rental automobiles and taxicabs, etc., will not adequately substitute for the use of privately-owned vehicles in carrying out work assignments involving mobility. It is my judgment that a request by a union official to employees to exercise a discretionary decision on their part under the facts and circumstances of this case does not establish a reasonable basis for the establishment of the Complaint. Accordingly, having found no reasonable basis established by the Complainant for the finding of a violation in this matter, the Complaint in this case must be and hereby is dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, LMSA, Attention: Federal Labor-Management Relations, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business October 27, 1976.

Dated at Chicago, Illinois this 12th day of October, 1976.

R. C. DeMarco, Regional Administrator
U. S. Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
11-29-76

Mr. John F. Bufe
Assistant Counsel
National Treasury Employees Union
1730 K Street, N. W.
Suite 1101
Washington, D. C. 20006

805

Re: Internal Revenue Service
Greensboro, North Carolina
Case No. 40-6685(GA)

Dear Mr. Bufe:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Arbitrability in the above-named case.

In agreement with the Regional Administrator, I find that the instant Application was filed timely and that, in the context of the parties' agreement, a "grievance" is not required for the Assistant Secretary to make a determination on arbitrability. See, in this regard, Department of the Treasury, Internal Revenue Service, Chicago District Office, A/SLMR No. 748. However, in my view, the issue whether the National Treasury Employees Union timely invoked advisory arbitration in the subject case raises a relevant question of fact which can best be resolved on the basis of record testimony.

Accordingly, I am hereby remanding the subject case to the Regional Administrator for reinstatement of the Application and issuance of a notice of hearing.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

INTERNAL REVENUE SERVICE GREENSBORO, NORTH CAROLINA Activity and NATIONAL TREASURY EMPLOYEES UNION Applicant	)))))))))	Case No. 40-6685(GA)

REPORT AND FINDINGS
ON
ARBITRABILITY

Upon an application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, an investigation of the matter has been conducted by the Regional Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

The Applicant filed an application on November 5, 1975, seeking a decision whether or not a matter is subject to the arbitration procedure in the existing agreement.

The Activity and the Applicant are parties to an agreement effective August 3, 1974, for a two-year period. Article 33 of the agreement covers "Adverse Actions" and procedures applicable thereto. Article 34 provides for "Advisory Arbitration of Adverse Actions." Article 35 covers "Grievance Procedure" for grievances arising from the interpretation or application of the terms of the Agreement. Article 36 provides for "Binding Arbitration" of grievances involving the interpretation or application of the terms of the agreement other than Article 32 (Disciplinary Actions) and Article 33 (Adverse Actions).

On December 26, 1974, Hattie W. Angel, employee in the Activity's Audit Division, was issued a letter of proposed adverse action by the Chief of the Audit Division. On February 19, 1975, the District Director sustained the actions of the Audit Chief and advised Angel she would be terminated effective February 28, 1975.

By letter of March 18, 1975, the Applicant wrote to the District Director of the Activity stating that pursuant to the agreement, it was invoking arbitration in connection with the adverse action concerning Angel. By letter of March 26, 1975, the Activity responded stating as follows:

> Your request to invoke arbitration dated March 18, 1975, and received by this office on March 24, 1975, is returned herewith as untimely.
>
> Article 33, Section 4 of the IRS-NTEU Multi-District Agreement provides for invoking arbitration within twenty-one (21) calendar days from the date of issuance of the decision letter.
>
> Decision letter was issued on February 19, 1975. A copy of the decision letter is attached.

Section 4 of Article 33 reads in part:

> A. An official who sustains the proposed charges against an employee in an adverse action will set forth his findings with respect to each charge and specification against the employee in his notice of decision.

> B.1. An employee against whom charges are sustained may appeal the decision on any basis allowed by applicable laws and regulations.
>
> 2. The Union has twenty-one (21) days to invoke advisory arbitration on behalf of an employee.

The Applicant requests that its invocation of arbitration be found timely and the Activity be ordered to arbitrate the issues involved in Angel's discharge.

The Activity urges dismissal of the Application on several grounds. First, it argues that the Assistant Secretary is without jurisdiction because no grievance was filed. It relies on the Recommended Decision and Order of Administrative Law Judge Krammer in Case No. 50-13006(AR) involving Internal Revenue Service, Chicago, and Chapter 10, National Treasury Employees Union. Secondly, the Activity states the Application has been untimely filed inasmuch as it is in excess of the 60-day time limit after its "final response" to the union dated March 26, 1975. Further, the Activity takes the position that the Applicant's request to arbitrate was more than 21 days from the date Angel received the Activity's notice of February 19, 1975.

The timeliness of the Application will be considered first. Section 205.2(b) states in part:

> . . . an application for a decision by the Assistant Secretary as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, must be filed within sixty (60) days after service on the applicant of a written rejection of its grievance on the grounds that the matter is not subject . . . to arbitration under that agreement: Provided, however, That such prescribed sixty (60) day period for filing an application shall not begin to run unless such rejection is expressly designated in writing as a final rejection. (Emphasis added)

The Activity's March 26, 1975, letter quoted herein was not designated as a final rejection. On September 24, 1975, in response to Applicant's request for a final decision, the Activity wrote to the Applicant stating in part:

> . . . A letter denying arbitration in this matter was forwarded via Certified Mail on March 26, 1975, (copy attached). That letter was, and remains, our final decision in this matter.

Inasmuch as the Activity did not expressly designate its March 26, 1975, letter as a final rejection, arbitration was not rejected until September 24, 1975. Therefore, I find that the Application was timely pursuant to Section 205.2(b) of the regulations.

The Activity argues that no grievance was filed, and in the absence of a grievance, there is no jurisdiction of the Assistant Secretary. The fact no grievance was filed is not in dispute. The parties' negotiated agreement does not require a grievance to be filed prior to invoking advisory arbitration. Inasmuch as the agreement makes no provision for the filing of a grievance prior to the invocation of advisory arbitration in adverse actions, the absence of a grievance is not fatal in seeking a determination of arbitrability from the Assistant Secretary. I, therefore, find that the application before me is not dismissable on the basis that there has been no grievance.

I shall now treat the issue of timeliness of Applicant's request to arbitrate the issue of the adverse action involving Angel. The Activity contends that arbitration must be invoked within 21 days from the date of the notice of decision to effect adverse action. As stated previously, the District Director's decision to terminate Angel was issued February 19, 1975. A copy of the Director's decision indicates Angel acknowledged receipt of the letter the same date it was issued. According to the Activity, in order to be timely arbitration had to be invoked by close of business March 12, 1975. The Activity states that the Applicant's March 18 letter invoking arbitration was received on March 24, 1975.

It is the Applicant's postition that the 21 days for invoking arbitration begins to run on the efective date of the adverse action and that the 21 days is applicable only to the date by which the request must be mailed, not the date of receipt. According to the Applicant the effective date of Angel's termination was February 28, 1975, and therefore the last day to invoke arbitration was March 21, 1975. Applicant has cited no instances where arbitration was successfully invoked more than 21 days after the Activity issued its decision in an adverse action.

The language of Section 4A refers to the "notice of decision" by the official who sustains the proposed charges in an adverse action. 4B2 provides that the union may invoke arbitration within 21 days. Neither Section 4A nor Section 4B contains language concerning the effective date of an adverse action. It states: "The Union has twenty-one (21) days to invoke advisory arbitration . . ." In the absence of express language that the 21 days for invoking arbitration will commence on the date of the adverse action or at any other point, the language in the contract, specifically Section 4A, must be considered as the point from which to calculate the time for requesting arbitration. Inasmuch as the Applicant's request for arbitration is dated March 18, it was more than 21 days from the notice of decision. Accordingly, the request for arbitration was untimely filed. Therefore, I find that the matter of the adverse action involving Hattie Angel is not subject to arbitration in an existing agreement.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business June 30, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: June 15, 1976

LEM R. BRIDGES, Regional Administrator
Labor-Management Services Administration
Atlanta Regional Office

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

11-10-76

806

Curtis Turner
National Representative
American Federation of
Government Employees
12th District
620 Contra Costa Blvd.
Suite 206
Pleasant Hill, Calif. 94523

Re: Department of Navy
Navy Public Works Center
San Francisco Bay
Case No. 70-4309

Dear Mr. Turner:

This is in connection with your request for review seeking reversal of the Regional Administrator's Report and Findings in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on October 8, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on October 22, 1976. Your request for review postmarked on October 21, 1976, was received by the Assistant Secretary subsequent to October 22, 1976.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's Report and Findings, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

DEPARTMENT OF THE NAVY NAVY PUBLIC WORKS CENTER SAN FRANCISCO BAY -ACTIVITY/PETITIONER -AND- AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES COUNCIL OF LOCALS NAVY PUBLIC WORKS CENTER SAN FRANCISCO BAY AREA, AFL-CIO INCUMBENT LABOR ORGANIZATION/INTERVENOR -AND- FEDERAL EMPLOYEES METAL TRADES COUNCIL OF OAKLAND, AFL-CIO -INCUMBENT LABOR ORGANIZATION/INTERVENOR	)	CASE NO. 70-4309

REPORT AND FINDINGS

ON

OBJECTIONS

In accordance with the provisions of the Agreements for Consent or Directed Election approved on June 14, 1976, runoff elections among the professional and nonprofessional employees voting units were conducted by secret ballot under the supervision of the Area Administrator, San Francisco, California, on July 14, 1976.1/

The results of the elections, as set forth in the Tallies of Ballots are as follows:

Nonprofessional employee voting unit:

Approximate number of eligible voters	936
Void ballots	19
Votes cast for FEMTC, AFL-CIO	229
Votes cast for AFGE, AFL-CIO	222
Challenged ballots	0
Valid votes counted	451

1/ Pursuant to the direction of A/SLMR No. 628, the initial elections among the professional and nonprofessional employees voting units were conducted on May 25, 1976, without any party receiving a majority of valid votes cast. In that election, the professional employees indicated their desire to constitute an exclusive bargaining unit separate from the nonprofessional employees.

Professional employee voting unit:

Approximate number of eligible voters	18
Void ballots	0
Votes cast for AFGE, AFL-CIO	4
Votes cast against exclusive recognition	7
Challenged ballots	0
Valid votes counted	11

Challenged ballots are not sufficient in number to affect the results of the elections.

Timely objections to procedural conduct of the election and to conduct improperly affecting the results of the election were filed on July 21, 1976, by the American Federation of Government Employees Council of Locals. The objections are attached hereto as Appendix A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Administrator has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to each of the objections involved herein:

Objection A

It is AFGE's contention that during the polling period at Polling Site 4, FEMTC observer Bob Abreu suggested to voter Lillie Allen that AFGE was backward, AFGE never did anything for the employees, FEMTC was the best union, and she should vote for FEMTC.

To substantiate this objection, AFGE has submitted a statement by employee Martha Wilson, which indicates that she witnessed the incident reported in the objection and which also alleges that there were no AFGE observers at Polling Site 4.

The Activity states that its observers report they did not witness the incident alleged in the objection. The FEMTC asserts that the objection is totally untrue and without foundation.

The investigation revealed that employee Wilson, who had cast her ballot in the election earlier in the day, claims that she accompanied a student aide known only to her as Kelly to Polling Site 4 shortly after 9:30 a.m. Wilson alleges that as she stood outside the door to the polling site while Kelly was registering to vote with the election observers, Wilson witnessed observer Abreu making the statements cited in the objection to Allen who was also at the poll to vote. According to Wilson there were no voters other than Kelly and Allen, who are both student aides, at the polling site at the time of this incident.

Allen reports that she voted at Polling Site 4 after she had eaten her lunch, at approximately 12 Noon. She does not recall any voters other than herself being at the poll when she was there to cast her vote. She does not recall observer Abreu or any other person suggesting to her that she should vote for FEMTC while she was at the polling site, nor does she recall Abreu making the other statements which AFGE alleges.

AFGE acknowledges that it has not questioned its observers assigned to Polling Site 4 to determine if they were present and witnessed the incident which is alleged in the objection. The Certification on Conduct of the Election for Polling Site 4 was signed by AFGE observers.

The official election records reveal that student aide Allen cast the final challenged vote at Polling Site 4 prior to its 12:30 p.m. closing. Allen's challenged vote was resolved by all parties at the tally as ineligible. 2/ No student aide by the name of Kelly cast a ballot at Polling Site 4.

While the statements of Wilson and Allen are contradictory as to whether or not the alleged incident did occur, both statements agree on the fact that no eligible voter was at the poll while Allen was voting in that both Allen and any student aide named Kelly were ineligible voters. Accordingly, I find that, even if this isolated incident did occur, it could not have affected the outcome of the election.

With respect to the allegation by employee Wilson that she did not see any AFGE observers at Polling Site 4, AFGE has not submitted any information regarding whether its assigned observers were at the polling site and, if they were not there, what reasons were for their absence. As already noted, the Certification on Conduct of the Election for that polling site was signed by AFGE observers.

Noting that AFGE has not alleged and no evidence indicates that any absence of its observers at Polling Site 4 is attributable to any party interfering with AFGE's right to station an observer at the poll, I find no basis to this portion of Objection A since the election is not dependent upon the parties availing themselves of the right to station observers at the polls.

Accordingly, I find all of Objection A to be without merit.

Objection B

AFGE contends that on June 23, 1976, at approximately 12:45p.m. Rudolph Cleveland, an employee of the Activity, was approached by representatives of the FEMTC and asked to join or consider voting for the FEMTC. AFGE asserts it did not receive this service from the Activity.

To substantiate this objection AFGE has submitted a statement by employee Rudolph Cleveland which indicates that this incident occurred at his work site. In its timely submitted supporting evidence AFGE identified the FEMTC representatives involved in this incident as Tony Schiana and a man known as Russell, whose last name is not known. AFGE indicated that Cleveland was on official duty at the time of the incident in question.

The Activity asserts there is insufficient information upon which it can base an opinion of Objection B.

The FEMTC has indicated that two of its representatives did in fact meet Cleveland while they were making inquiries of a supervisor regarding the time of the lunch period for the employees. The FEMTC reports that Cleveland hollered across the shop that he wanted equal time with the supervisor. FEMTC asserts that no union representatives asked Cleveland to join the FEMTC since an individual can only join an affiliated union and cannot join the FEMTC itself.

2/ At the tally of ballots all parties to the election agreed that Allen was an ineligible voter because she was a student aide and signified their agreement by initialing the challenged ballot envelope and marking it "ineligible." Student aides are considered temporary employees by the parties and were excluded from the unit because they work on a part-time basis during the summer and winter without reasonable expectancy to continue employment beyond their present limited appointment.

Employee Cleveland reports in a statement submitted to the Department of Labor that on the date of the incident in question he intervened in a conversation among two representatives of the FEMTC and a Foreman of the Activity. Initially, Cleveland reports he kiddingly said to the two FEMTC representatives and the Foreman, "I want equal time to campaign for AFGE on work hours." After the men introduced themselves, the Foreman went into his office. At that point, one of the FEMTC representatives asked Cleveland to vote for the FEMTC. Cleveland responded that he was a member of AFGE and that he would not commit himself to the FEMTC. The other FEMTC representative then suggested that Cleveland give FEMTC consideration. According to Cleveland, that was the conclusion of their conversation and the FEMTC representatives left the building.

The supervisory foreman Adam Figueroa, who allegedly was involved in this incident, reports that he never saw any union representatives either in the building or near his office during any working period prior to the July 14 elections. Further, Figueroa does not recall any incident prior to the July 14 elections in which he met any union representatives and conversed with them together with employee Cleveland.

Assuming that the incident occurred as alleged by AFGE, it involved only one employee for a very few minutes three weeks prior to the election. I find such an isolated incident is insignificant in view of the widespread campaigning by the parties and would not have affected the outcome of the election. (See in this regard Request for Review Nos. 10 and 663, where the Assistant Secretary held that while a labor organization does not have a right under the Order to campaign in work areas during work time, isolated incidents do not warrant setting aside an election.) Therefore I find no merit to Objection B.

Objection C

AFGE has contended in Objection C that employee Mathew Smith cast both a manual and an absentee ballot.

To sustain this objection AFGE has submitted a statement by employee Rudolph Cleveland that Smith informed Cleveland he had cast both a manual and an absentee ballot.

It is the Activity's position that it has insufficient information upon which to voice an opinion of Objection C. The FEMTC does not have any position regarding Objection C.

The official election records reveal that employee Mathew Smith neither returned the absentee ballot mailed him on June 21, 1976, nor voted manually at any of the polling sites on July 14, 1976. Accordingly, I find no merit to this objection.

Objection D

AFGE contends that an unnamed supervisor told employee John Gross to vote for the FEMTC.

To substantiate this objection AFGE has submitted a statement from employee Rudolph Cleveland alleging that Gross told Cleveland that a supervisor had told him to vote for the FEMTC. AFGE has not identified the supervisor who is alleged to have instructed Gross to vote for the FEMTC.

It is the Activity's position that it has insufficient information upon which to respond to the objection and that AFGE's failure to supply the name of the supervisor who allegedly told Gross to vote for the FEMTC is tantamount to a withdrawal of the objection.

The FEMTC's position is that without supportive evidence, it cannot respond to the objection and that the objection should be dismissed as having no merit.

Rudolph Cleveland did not witness the alleged conversation between Gross and the unnamed supervisor. Thus, the only evidence AFGE has submitted is hearsay. Such evidence is rarely of any probative value. In this particular instance, the investigation revealed that employee Gross denies that any supervisor advised him to vote for FEMTC or that he ever told Cleveland that a supervisor had instructed him to vote for FEMTC.

Under these circumstances, I find this objection to be without merit since there is no probative or reliable evidence to support it.

Objection E

AFGE has asserted in Objection E that a large number of employees were on leave on the date of the election. AFGE quotes from the Assistant Secretary's "Procedural Guide to the Conduct of Elections" which indicates that an election should be conducted on a day or days when the maximum number of eligible employees will be at work.

To sustain its contention that a large number of employees were on leave on the date of the runoff elections, AFGE submitted a statement by Rudolph Cleveland that more employees at the Naval Supply Center were on leave on July 14, 1976, than at any time in the month of June.

Neither the Activity nor the FEMTC has a position on Objection E.

The date of the runoff elections was determined by the San Francisco Area Administrator in accordance with Section 202.7(d) of the Regulations of the Assistant Secretary when the parties were unable to agree to a mutually acceptable date. The Area Administrator considered the positions of all the parties and the facts presented when making the decision regarding the date of the elections, and relied upon the Department of Labor's policy that, except in changed circumstances, the details of a runoff election shall be essentially the same as those agreed upon in the initial election. The selection of the July 14 date for the runoff elections was based upon the facts that the earliest date the Activity could be prepared to mail out absentee ballots was June 16, 1976, that the established absentee ballot procedure reasonably required a three-week time span, and that all the parties expressed the opinion that the runoff elections should not be scheduled for the week of July 4.

The official election records reveal that the size of the eligible nonprofessional voting unit was essentially the same in the runoff election as it was in the original election and that 45 percent of the eligible nonprofessional voters cast ballots during the original election while 50 percent of the eligible nonprofessional voters cast ballots during the runoff election.

Noting that a larger percentage of eligible voters in the nonprofessional voting unit cast ballots in the runoff election than in the initial election, and that no evidence has been presented to indicate that the date of the runoff elections selected by the Area Administrator adversely affected the outcome of the elections, I find no merit to Objection E.

Objection F

In objection F, AFGE has asserted that there were not an equal number of observers at each tallying point during the ballot count. AFGE cites a part of the Assistant Secretary's "Procedural Guide to Conduct of Elections" which indicates that each party to the election is allowed to station an equal number of authorized observers to verify the tally.

Specifically, AFGE objects to a comment made by a representative of the Activity to an alternate observer, Barbara Turner, that Turner did not need to attend the tally of ballots. Additionally, in the evidence submitted to support its objections, AFGE has objected to a procedure used by the Department of Labor at the tally to determine that no voters cast both challenged and manual ballots. In conjunction with the same objection, AFGE has asserted that voter Ronald Graham was declared an ineligible voter at the tally.

It is the FEMTC's position that this objection is unclear, confusing and ambiguous and that it was the responsibility of each party to provide observers.

The Activity asserts that in the objections filed by AFGE on July 21, 1976, AFGE contended that the Department of Labor failed to ensure an equal number of observers at each polling station, whereas AFGE's August 6 supporting information indicated the essence of its objection to be that only four of its observers were provided with eligibility lists at the tally of ballots. Although the Activity declines to take a position on Objection F since it concerns matters within the purview of the Department of Labor, it asserts that AFGE's August 6 letter introduces a new objection to the runoff elections which is untimely filed. 3/

AFGE submitted a statement from Turner reporting that on the day before the runoff elections an Activity representative told her she was an alternate observer and would not be needed at the tally of ballots. The investigation of this part of the objection revealed that according to alternate observer Turner no AFGE representative instructed her that she was to attend the tally of ballots for the runoff elections. Additionally, although an Activity representative did indicate to Turner that she need not attend the tally, the comment, according to Turner, was simply in response to Turner's expressed concern regarding her heavy workload on the date of the elections.

3/ In accordance with Section 202.20(b) of the Regulations of the Assistant Secretary, AFGE submitted evidence supporting and clarifying its objections by letter dated August 6, 1976. The Activity proposes that portions of Objections F and G be dismissed on the ground that AFGE's August 6 letter in fact introduced new objections to the conduct of the runoff elections which are untimely filed. I agree with the Activity that two of AFGE's allegations contained in its August 6 letter are new objections which were not timely filed in accordance with Section 202.20 of the Regulations. Thus, I will not consider AFGE's allegation that it received no explanation from the Activity regarding why more employees received mail ballots in the runoff elections than had received mail ballots in the original election. Neither will I consider AFGE's objection that three names of eligible voters were omitted from the eligibility list. However, I am considering in this Report and Findings AFGE's objection regarding the stationing of observers at the tally of ballots, AFGE's objection regarding certain employees receiving absentee ballots and other similarly situated employees not receiving absentee ballots, and AFGE's objection regarding its failure to receive copies of the sample ballots. I find these issues were initially raised in AFGE's objections timely filed on July 21, 1976.

I find no merit to this portion of the objection. In addition to the investigation revealing that Turner was never instructed by AFGE to attend the tally and that the statement by management was simply in response to Turner's concern regarding her workload, Turner's absence at the count had no effect on the outcome of the election.

Secondly, AFGE objects to a procedure used at the tally to determine that no employees cast both a challenged ballot and an unchallenged manual ballot. This procedure consisted of, first, comparing the alphabetized absentee ballot envelopes to determine that no voter cast both an absentee ballot and a challenged ballot, and then comparing the alphabetized challenged ballot envelopes with the eight polling site voter eligibility lists to determine that none of the challenged ballot voters had also voted unchallenged at their designated polling site. At the tally the eight polling site voter eligibility lists were distributed to a total of eight observers representing the three parties to the election. Four AFGE observers participated in this portion of the tally.

It is AFGE's contention that an AFGE, FEMTC and Activity observer should have been stationed at each of these eight polling site eligibility lists while the determination was being made that no voter cast both a challenged and an unchallenged manual ballot. During the tally the AFGE representative voiced no protest to the procedure being used to make the eligibility determinations and in fact agreed to resolution of all 149 of the challenged ballots cast during the runoff elections.

I find no merit to this portion of Objection F since during the tally the AFGE representative failed to voice any opposition to the procedure being used and AFGE has failed to submit any evidence which would indicate that the procedure used at the tally to determine that no voters cast both a challenged and unchallenged ballot in any way affected the results of the election.

Third, AFGE has asserted that although its representative at the tally agreed during the tally that employee Ronald Graham was an ineligible voter, it now believes that Graham was eligible. Therefore, it is AFGE's position that Graham's challenged vote should be counted.

I find no merit to this portion of Objection F since it is in fact a dispute over a challenged vote which was resolved by all the parties at the tally of ballots. In accordance with the Assistant Secretary's Report No. 51, challenges cannot be entertained through the objections to election procedure.

Objection G

AFGE has alleged that certain employees received absentee ballots who were not entitled by the election agreement to absentee ballots and other employees who were in similar circumstances did not receive absentee ballots.

To sustain this objection, AFGE submitted a statement by representative Maxon Powell which alleges that George Staedler received an absentee ballot although his name was not on the Activity's eligibility list; that employee Thomas Coxum was on scheduled vacation on the date of the July 14 election but received an absentee ballot, while, employee Herbert Haley, who was also on vacation, did not receive an absentee ballot; that employee John Stone, whose normal work days included the date of the July 14 election, received an absentee ballot, while employee John Spehar, whose normal schedule also did not include the date of the election, did not receive an absentee ballot.

It is the FEMTC's position that Objection G is unclear, confusing and ambiguous.

The Activity contends that the numbers and/or identities of employees entitled to receive mail ballots in a particular election can vary depending upon the day of the week for which the election is scheduled. The Activity asserts that the timely portion of this objection dealt with the procedure followed by the Activity in transmitting mail ballots to employees, whereas AFGE's August 6 letter clarifying the objections indicates that the essence of Objection G is that there was an increase in the number of mail ballot voters in the runoff election. The Activity asserts that the point, first raised in AFGE's August 6 letter, is in fact untimely filed and should be dismissed.

The official election records reveal that Staedler, Coxum and Stone did not return the absentee ballots supplied them.

The investigation also revealed that employee Spehar was working in the vicinity of a polling site on the date of the July 14 runoff election and therefore was not entitled to receive an absentee ballot according to the parties' election agreement.

With respect to the allegations raised by this objection, I make the following findings:

Regardless of whether employees Staedler, Coxum, and Stone were entitled to receive absentee ballots, their receipt could not have affected the results of the election since none of these employees returned his absentee ballot.

Secondly, in accordance with the Department of Labor's standard policy, any employee on annual leave on the date of a representation election is not entitled to receive an absentee ballot. Thus, if employee Haley was on annual leave on the date of the runoff elections at the Activity, as asserted by AFGE, he was not entitled to receipt of an absentee ballot.

Thirdly, employee Spehar was not entitled to an absentee ballot according to the parties' election agreement since he was working in the vicinity of a polling site on the date of the runoff elections.

Accordingly, I find the entire Objection G to be without merit.

Objection H

AFGE has alleged that it was not supplied with a copy of the sample ballots that were mailed to absentee voters.

AFGE contends that during the initial election the Activity supplied it with a copy of the package of materials forwarded to absentee balloters, but that it failed to supply this same information, including the sample ballots, to AFGE during the runoff elections. In conjunction with this objection, AFGE has stated that its representative did not attend the mailing of the absentee ballots.

It is the Activity's position that AFGE was afforded a full opportunity to be present at and participate in the mailing of the absentee ballots and declined to do so.

It is the FEMTC's position that the objection is unclear, confusing and ambiguous.

The investigation revealed that the AFGE representative did not attend the mailing of the absentee ballots because he was on sick leave on the designated date. The representative acknowledges that he did not assign an alternate to attend the mailing. Additionally, the investigation revealed that the AFGE representative did not request that the Activity supply AFGE with a copy of the sample ballots mailed to the absentee voters and that the sample ballots were in fact posted conspicuously at numerous points at the Activity during the period of June 21 through July 14, 1976.

Based on the facts that AFGE has neither contended, nor has any evidence been presented to indicate, that any party in any way interfered with AFGE's right to attend the mailing of the absentee ballots; that the Activity did not refuse to supply AFGE with a copy of the sample ballots mailed absentee voters; that the sample ballots were posted conspicuously at the Activity; and that no evidence has been submitted to indicate that AFGE's failure to obtain a copy of the sample ballots in any way affected the outcome of the election, I find no merit to this objection.

Having found that no objectional conduct occurred improperly affecting the results of the election, the parties are advised hereby that a Certification of Representative in behalf of the Federal Employees Metal Trades Council of Oakland, AFL-CIO for the unit of nonprofessional employees and a Certification of Results of Election for the unit of professional employees will be issued by the Area Administrator absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of these actions by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C., 20210. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on October 22, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Gordon M. Byrholdt

GORDON M. BYRHOLDT
Regional Administrator
San Francisco Region
Room 9061 Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: October 7, 1976

Attachments: Appendix A
Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

11-15-76

807

Donald W. Jones, President
Local 1365, American Federation
of Government Employees
165 North Canal Street
Chicago, Illinois 60606

Re: Social Security Administration
Great Lakes Program Center
Chicago, Illinois
Case No. 50-13163(CA)

Dear Mr. Jones:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on October 19, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on November 3, 1976. Your request for review postmarked on November 3, 1976, was received by the Assistant Secretary subsequent to November 3, 1976.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

SOCIAL SECURITY ADMINISTRATION,
GREAT LAKES PROGRAM CENTER,
CHICAGO, ILLINOIS,

Respondent

and

Case No. 50-13163(CA)

LOCAL 1395, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO,

Complainant

The complaint in the above-captioned case was filed on June 25, 1976, in the Office of the Chicago Area Administrator. It alleges a violation of Sections 19(a)(1), (2) and (6) of Executive Order 11491, as amended. The complaint has been investigated and carefully considered. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the complaint has not been established, and I shall therefore dismiss in its entirety the complaint in this case.

It is alleged that the Respondent violated Sections 19(a)(1), (2) and (6) of the Order on February 26, 1976, in denying an official 1/ of the Complainant labor organization benefit of the waiver provisions of the Whitten Amendment 2/ in reprisal for the official's full-time involvement in union activity. It is further alleged that the Respondent violated Sections 19(a)(1), (2) and (6) of the Order on October 30, 1975, by failing to consult with representatives of the Complainant before it modified the annual performance appraisal of this official.

Investigation reveals that the initial charge in this matter was made on March 9, 1976, and amended on March 19, 1976. The initial charge describes a failure on the part of the Respondent to initiate a request on behalf of the union official for a waiver of Whitten Amendment restrictions regarding the mandatory time-in-grade requirement relative to promotion. Additionally, the amended charge describes an allegedly unilateral modification by the Respondent of the official's annual performance appraisal. A final written decision was

1/ The union official in question served initially as a steward and is currently the executive vice-president of the local. Since 1968 he has been engaged in authorized union activity on a full-time basis.

2/ The Whitten Amendment (Section 1310 of Public Law 82-253) deals with those restrictions governing promotions in the Civil Service, including time-in-grade limitations.

issued by the Respondent on April 27, 1976, denying the basis of the charge concerning both the request for waiver of the Whitten Amendment and the alleged unilateral change in the official's appraisal.

I shall take up the alleged violations of the Order in the sequence provided. In regard to that portion of the complaint concerning the Whitten Amendment, I find that no obligation exists on the part of the Respondent to initiate a request of the appropriate authorities for a waiver of the Whitten Amendment restrictions on behalf of the union official. Complainant has failed to establish any grounds for a possible 19(a)(6) violation of the Order in its narrative in support of this portion of the complaint. In alleging violations of 19(a)(1) and (2) of the Order, Complainant is relying on its interpretation of the Whitten Amendment waiver procedure as a routine benefit of employment which is being denied the official in question conceivably as reprisal for his union activity. However, investigation reveals that the last time waiver procedures were instituted by the Respondent was in 1963 when it was done on a nation-wide basis as a result of a reclassification adjustment. Thus, it is evident that the waiver procedure can be considered an extraordinary one and that the union official is requesting much more than a usual benefit of employment.

Even if the Whitten Amendment waiver procedure were to be construed as a benefit of employment, the complaint must still be dismissed because Complainant has failed to establish reasonable grounds for finding anti-union animus as motivation for Respondent's actions. Additionally, it must be noted that the official in question voluntarily assumed his duties as a full-time union official in 1968 and, since that time, information supports the fact that he has been regularly considered for promotion based largely upon the experience which he has developed while serving as a union officer. 3/ Thus, Complainant has failed to show how Respondent has taken reprisals against the official or otherwise harassed or discriminated against him because of his union activity and, even further, it has failed to show how the official's voluntarily assuming a position which is not classifiable under agency regulations has caused him hardship.

3/ Investigation reveals that in the two-year period from July 1, 1974, to June 30, 1976, the official in question was in the area of consideration for GS 11 and GS 11/12 positions 26 times; he was listed on the promotion roster cutoff and his name was submitted to the promotion committee for ranking nine times; further, he was listed on the "Best Qualified List" three times.

In regard to that portion of the complaint concerning the official's performance evaluation, I find that no obligation exists on the part of the Respondent to consult with the Complainant prior to modifying the official's appraisal in the manner described in the complaint. 4/ Complainant apparently relies upon Article 34 of the Master Agreement Between the Bureau of Retirement and Survivors Insurance of the Social Security Administration and the National Office of the American Federation of Government Employees 5/ as the basis from which Respondent deviated in modifying the appraisal. However, Article 34 merely states that, "the last appraisal of record will remain in effect for those union officials . . . who are not otherwise eligible to receive an appraisal under the applicable appraisal instructions." The article is silent with respect to an obligation for the parties to consult over any changes which are made in union official's appraisals. Article 34 also states that, "they /union officials/ will normally be entitled to a satisfactory rating," but the article is silent with respect to exactly what standards the rating should exhibit. 6/ Thus, absent contractual provisions which clearly define the obligation to negotiate over the modification of union official's appraisals, no possible violation can be detected.

With respect to the allegation of 19(a)(1) and (2) violations of the Order relative to the performance appraisal portion of the complaint, I find that reasonable grounds have not been established for the finding of a violation. A distinction must be made between modification of the content of the appraisal in an administrative or managerial sense and a modification in such content which is effected against an individual as a reprisal for his union activity. In the subject case, Complainant has failed to allege a causal link between the changes it describes and any possible anti-union animus. Absent such a link, it is not possible to detect violations of either 19(a)(1) or (2) of the Order.

4/ The modification consisted of the deletion of the reviewer's signature and the deletion of an annotation describing the official's full-time involvement in authorized union activity. This change was effected as the result of a memorandum from the Bureau Director dated October 6, 1972, and does not appear to affect the overall content of the evaluation.

5/ This agreement became effective on March 15, 1974, for an initial two-year period and is automatically renewable for successive one-year periods thereafter.

6/ The 1968 evaluation, which was based upon the union official's having performed his regularly assigned agency duties, reflected an overall "satisfactory" rating. The 1975 evaluation, which became the subject of the complaint in this case, was a "carry-over" appraisal of the 1968 ratings and, thus, it too reflected an overall "satisfactory" rating.

It must also be noted that the modifications in question were initially effected in 1972, while the 1975 evaluation represents the first time Complainant has chosen to raise the issue in this forum. Thus, the appraisal in its present form can be construed as a continuing practice of employment and, by raising no prior objection, Complainant can be inferred to have indicated consent and, in effect, rendered mute its subsequent raising of the issue. By asserting that a section of the collective bargaining agreement calling for "carry-over" appraisals for full-time union officials requires the activity to negotiate before making even administrative changes in union official's appraisals, Complainant is seeking a special status for union officials in relation to other employees in this area and is clearly intruding upon management perogatives as outlined in Section 12 of the Order.

Having considered carefully all the facts and circumstances in this case, including the charge, the complaint and all information supplied by the Complainant, the complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business November 3, 1976.

Dated at Chicago, Illinois this 19th day of October, 1976.

R. C. DeMarco, Regional Administrator
U. S. Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

11-29-76

Mr. Joe C. Wilson 808
National Vice President
National Association of Government
Employees
3300 W. Olive Avenue, Suite A
Burbank, California 91505

Re: U.S. Department of the Air Force
Travis Air Force Base, California
Case No. 70-4750

Dear Mr. Wilson:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Objections in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted. In this regard, it is particularly noted that the matters raised in the objections took place prior to the filing of the instant petition, and are matters previously investigated and ruled upon by the Regional Administrator. Compare Department of the Navy, Commissary Store Complex, Oakland, California, A/SLMR No. 654.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Objections to the instant election is denied, and the Regional Administrator is hereby directed to cause a runoff election to be conducted under the supervision of the Area Administrator.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

U. S. DEPARTMENT OF THE AIR FORCE TRAVIS AIR FORCE BASE TRAVIS AIR FORCE BASE, CALIFORNIA -ACTIVITY -AND- AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1764, AFL-CIO -PETITIONER -AND- NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, LOCAL R12-75, INDEPENDENT -INCUMBENT LABOR ORGANIZATION/ INTERVENOR	CASE NO. 70-4750

REPORT AND FINDINGS

ON

OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on July 29, 1975, an election by secret ballot was conducted under the supervision of the Area Administrator, San Francisco, California, on August 21, 1975. The results of the election, as set forth in the Tally of Ballots, are as follows:

Approximate number of eligible voters	823
Void Ballots	0
Votes cast for NAGE, Local R12-75	108
Votes cast for AFGE, Local 1764	101
Votes cast against exclusive recognition	19
Valid votes counted	228
Challenged ballots	0
Valid votes counted plus challenged ballots	228

Timely objections to conduct affecting the results of the election were filed on August 28, 1975, by the Incumbent/Intervenor, the National Association of Government Employees, Local R12-75, Independent (herein referred to as NAGE). The objections are attached hereto as APPENDIX A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Administrator has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investi-

gation, and my findings and conclusions with respect to the objections.[1/]

The three interrelated objections to the election address themselves to the alleged improper conduct of the American Federation of Government Employees (herein referred to as AFGE) in the collection of its showing of interest which accompanied its representation petition filed in the San Francisco Area Office on June 9, 1975, and the alleged improper assistance which Travis Air Force Base (herein referred to as the Activity) rendered to AFGE in the collection of its showing of interest.

In its objections, NAGE has specifically alleged that AFGE obtained signatures for its showing of interest petition during duty hours and through the use of fraud. [2/] Additionally, NAGE has asserted in its objections that the Activity provided assistance to AFGE in obtaining its showing of interest by permitting the AFGE representative to enter areas in which NAGE holds exclusive representation. [3/]

NAGE submitted signed statements from employees Joan Werwa, S. Colleen Baumann, and Eugenie Lee Shine to sustain its allegations that AFGE obtained signatures for its showing of interest petition during duty hours and through the use of fraud. No evidence was submitted to sustain the allegation that the Activity provided assistance to AFGE in obtaining its showing of interest by permitting the AFGE representative to enter areas in which NAGE holds exclusive representation. It is NAGE's position that the Commander is responsible for allegedly permitting the AFGE representative to enter areas in which NAGE holds exclusive representation.

The Activity has stated that the incidents constituting the objections to the election occurred on May 15, 1975, prior to the filing of the representation petition. The Activity's position is that there is no basis for the objections since in accordance with Assistant Secretary Report on Ruling Number 58, conduct occurring prior to the filing of an election petition may not be considered as grounds for setting aside an election.

AFGE has argued there is no basis for the objections by asserting that no substantial evidence of a violation of the Order was submitted by NAGE in that the only statements supplied as evidence were not specific as to time, date, or place. AFGE also referenced Assistant Secretary Report on Ruling Number 58 to sustain its position that there is no basis for the election objections filed by NAGE.

Werwa's statement of July 29, 1975, and Baumann's statement of August 5, 1975, indicate that they were each contacted by AFGE Local 1764 President Emily Whittemore while on duty at their work sites in late May or early June 1975. Supplemental statements signed by Werwa and Baumann dated September 4, 1975, indicate that the contacts with Whittemore occurred on June 17, 1975. Baumann submitted an additional signed statement to the Department of Labor dated September 15, 1975, which declared that the incident in which she was involved occurred on May 15, 1975. Thus, although there has been confusion regarding the date of the incidents which allegedly constitute the improper conduct of AFGE in the collection of its showing of interest, it is evident that since AFGE's showing of interest accompanied its representation petition filed on June 9, 1975, any improper conduct by either AFGE or the Activity regarding the collection of AFGE's showing of interest must have occurred prior to the filing of the petition.

Assistant Secretary Report on Ruling Number 58 clearly states that "Conduct occurring prior to the filing of the election petition may not be considered as grounds for setting aside the election". Thus, in accordance with Assistant Secretary Report Number 58, and noting that appropriate investigations were previously conducted by the San Francisco Area Office into the same conduct protested in these objections without revealing evidence of any irregularity which could have affected the outcome of the election, I find that the allegedly improper conduct, all of which occurred prior to the filing of the petition, did not affect the results of the election. Accordingly, the objections are found to have no merit.

Having found that no objectional conduct occurred improperly affecting the results of the election, the parties are advised hereby that a runoff election will be conducted under the supervision of the Area Administrator, absent the timely filing of a request for review of this Report and Findings. The two choices on the runoff ballot will be AFGE and NAGE.

1/ Subsequent to the filing of the objections, NAGE filed an unfair labor practice complaint (Case No. 70-5032) which blocked further processing of the instant representation case. The complaint was dismissed by the undersigned on March 5, 1976. NAGE filed a request for review of the dismissal, which was denied by the Assistant Secretary on July 16, 1976. Since the unfair labor practice complaint has been disposed of, a ruling can now be made on the objections.

2/ Prior to the August 21, 1975, representation election NAGE alleged by letter dated August 8, 1975, that AFGE had obtained signatures for its showing of interest during duty hours and through the use of fraud. An appropriate investigation of the allegation of fraud was conducted by the San Francisco Area Office. NAGE was advised by letter dated August 12, 1975, that there was insufficient evidence that any alleged irregularity was attributable to AFGE and that the showing of interest submitted by AFGE, independent of that portion under challenge, was sufficient to satisfy the filing requirements of Section 202.2 of the Assistant Secretary's Rules and Regulations. Further, NAGE was advised that the allegation concerning solicitation of employees for signatures during duty hours was more properly the subject matter of an unfair labor practice proceeding.

3/ As noted above, on October 29, 1975, NAGE filed an unfair labor practice complaint alleging that the Activity violated Section 19(a)(3) of the Order by negligently permitting an AFGE nonemployee representative to collect signatures at a NAGE-represented worksite during duty hours and thus assisted AFGE in obtaining its showing of interest. It was also alleged that the AFGE nonemployee representative fradulently collected the showing of interest. In denying NAGE's request for review of the dismissal of the complaint, the Assistant Secretary noted that the evidence did not establish that the Activity had any knowledge of the activities of the AFGE nonemployee representative, nor was there any evidence provided to establish a reasonable basis for the allegation of improper assistance to AFGE on the part of the Activity.

Pursuant to Section 202.20(f) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Laobr-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on August 23, 1976.

LABOR-MANGEMENT SERVICES ADMINISTRATION

Gordon M. Byrholdt

GORDON M. BYRHOLDT
Regional Administrator
San Francisco Region
Room 9061 Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

11-29-76

Mr. Harry McClure
National Federation of Federal
Employees, Local 1103
9242 Newton Street, Apt. 2-E
Overland Park, Kansas 66212

809

Re: U.S. Department of Housing and
Urban Development
Kansas City Regional Office
Case No. 60-4434(CA)

Dear Mr. McClure:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis for the complaint has not been establishcd and, consequently, further proceedings in this matter are unwarranted. I concur with his finding that the issues raised with respect to the Section 19(a)(1) and (2) allegations in the complaint involve essentially the same matters raised in the informal grievance processed under the agency grievance procedure. As such, Section 19(d) of the Order precludes the processing of those allegations contained in the instant complaint. With respect to the Section 19(a)(4) allegation, I concur with the Regional Administrator's conclusion that because this allegation was first raised in the instant complaint it must be dismissed as procedurally defective as it fails to meet the pre-complaint charge requirements of Section 203.2(a) of the Assistant Secretary's Regulations.

Accordingly, the request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

July 16, 1976

Mr. Harry McClure, President
National Federation of Federal
Employees, Local 1103
9242 Newton
Overland Park, Kansas 66212

In Reply Refer To:
60-4434(CA)

Dear Mr. McClure:

The above-captioned case alleging violations of Section 19(a)(1), (2) and (4) of the Executive Order 11491, as amended, has been fully investigated and carefully considered. I have decided that further proceedings in this case are not warranted, and the complaint should be dismissed in its entirety.

In reviewing the case, I have concluded that the issues raised in the complaint are the same as the issues raised in a grievance filed previously by Ethel Goodman. Accordingly, under Section 19(d) of the Order, this office is precluded from considering this matter further.

This decision was arrived at by comparing the language in the July 25, 1975 Memorandum from Ethel Goodman to Theodore Walensky, with the language in the pre-complaint charge and the complaint itself. In the July 25, 1975 informal grievance letter to Walensky, Goodman states that the "reason for this action is your failure to provide me with a position description clearly outlining the duties I am to perform...." Goodman further alleges that she has been subject to various degrees of harassment in trying to obtain a clarification of her duties. The pre-complaint charge was filed with HUD on October 2, 1975, while this informal grievance was still pending with Walensky. The pre-complaint charge echoes the earlier grievance language stating that the "violations specifically include harassment of a Union official and failure to clearly identify work assignments...." The pre-complaint charge continues to state that the result of these alleged management actions (or inactions) is that Goodman had been denied an "equal opportunity for promotions and awards." The language of the grievance was "I have been deprived of promotions and all opportunity to earn awards."

Goodman, in her January 5, 1976 memo, contends that the Unfair Labor Practice is properly filed because she did not raise the issue of the "other employee" receiving an award in her informal grievance. It is true that she made no mention of any other employee receiving an award or promotion. However, in the Unfair Labor Practice, the allegations concerning the "lack of a position description" are the same exact allegations that were in the grievance. The awards that are mentioned in the ULP only show the results of this alleged unfair labor practice and is not alleged to be an unfair labor practice in and of itself. Under the facts presented, I must conclude that the question relating to Goodman's job description in the ULP is inseparable from the theory of violations complained of in the July 25, 1975 grievance.

The reasoning behind the Section 19(d) provisions is found in the Report and Recommendations on the Amendment of Executive Order 11491 by the Federal Labor Relations Council which states, in pertinent part, "We propose...that when an issue may be processed under either a grievance procedure or the Unfair Labor Practice procedure, it be made optional with the aggrieved party whether to seek redress under the grievance procedure or under the Unfair Labor Practice procedure. The selection of one procedure would be binding; the aggrieved party would not be permitted, simultaneously or sequentially, to pursue the issue under the other procedure." It would appear from this language that the filing party has an option prior to the act of filing as to what procedure to use, but that once having raised a matter for consideration under one procedure, it is precluded from raising the same matter under the other procedure. There is precedent in this decision in that the Assistant Secretary has before dismissed complaints, because the issues in the complaint had been previously raised in a grievance procedure.1/

The grievance, which was filed under HUD Employee Grievance Handbook Procedures, was withdrawn on October 10, 1975, eight days after the pre-complaint charge was filed. The reason for canceling the informal grievance, as given by Goodman in her January 5, 1976 memo, was because "no sincere attempt was made to resolve the issues...." To permit this reasoning to validate a subsequent unfair labor practice which covers the same facts and occurances would, in my opinion, emasculate the provisions of Section 19(d) of the Order. Even if the Activity failed to follow the agency grievance procedure, such non-adherence would not interfere with employee rights which are assured under the Order, and would not, therefore, be an unfair labor practice.2/

Finally, the Complaint alleges a 19(a)(4) violation of the Order in that Walensky "continued to channel the more important work assignments with respect to the new function to said employee, while he has given no work assignments, whatsoever, to Ms. Goodman since the Alleged Unfair Labor Practice was filed." An examination of the documents submitted by the parties indicates that this allegation was not, and moreover could not, be raised in the pre-complaint charge. The first time this allegation was ever raised was in the filing of the complaint. In my view, the wording of Section 203.2(a) of the Assistant Secretary's Rules and Regulations is clear and unequivocal; a pre-complaint charge must be filed in writing with the party to whom the charge is directed before the filing of a complaint. I, therefore, need not consider the merits of this allegation as it is procedurally defective and must be dismissed accordingly.

In view of all of the foregoing, I further conclude that the Complainant has failed to sustain the burden of proof as required in Section 203.6(e) of the Regulations, and therefore, I shall dismiss the Complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

1/ Warner Robins Air Materiel Base, Robins AFB, Georgia, A/SLMR 340.

2/ Office of Economic Opportunity, A/SLMR 334.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20210, not later than close of business Aug. 2, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

11-29-76

810

Mr. Forrest Wooten
National Vice-President
American Federation of Government
Employees, AFL-CIO
West Clinton Building
Room 432
2109 Clinton Avenue West
Huntsville, Alabama 35805

Re: Naval Air Rework Facility
Naval Air Station
Pensacola, Florida
Case No. 42-3214(GA)

Dear Mr. Wooten:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's Report and Findings on Arbitrability in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the grievance herein involves a matter for which a statutory appeal procedure exists. Thus, the grievance is neither grievable nor arbitrable under the terms of the parties' negotiated agreement.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Arbitrability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NAVAL AIR REWORK FACILITY
NAVAL AIR STATION
PENSACOLA, FLORIDA

Activity

and

LOCAL 1960, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Applicant

CASE NO. 42-3214(GA)

REPORT AND FINDINGS
ON
ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability duly filed under Section 205 of the Regulations of the Assistant Secretary, an investigation of the matter has been conducted by the Regional Administrator. I have also contacted the Civil Service Commission and a copy of the Director's reply is attached.

Under all of the circumstances, including the positions of the parties and of the Civil Service Commission and the facts revealed by the investigation, I find and conclude as follows:

The Application was filed in the Miami Area Office on January 9, 1976, by Local 1960 of the American Federation of Government Employees, AFL-CIO, hereinafter referred to as the Applicant. Applicant is the exclusive representative of a unit of approximately 2700 employees of the Activity. An agreement effective for a three-year period beginning December 18, 1972, is applicable at all times material to the circumstances herein. Article XXXI of the agreement contains a four-step procedure for the processing of employee and union grievances pertaining to the interpretation or application of provisions of the agreement. It provides that the grievance procedure shall exclude matters for which statutory appeals procedures exist. Article XXXI contains a list of 18 typical matters excluded from the grievance procedure. Among them are the following:

> A position classification decision appealable under part 511
>
> A job-grading decision appealable under part 532
>
> Injury Compensation . . . Title 5, Chapter 81, Section 8121, etc.

Article XXXII provides for arbitration if the parties fail to reach satisfactory settlement of a matter processed under the provisions of Article XXXI. Additionally Article XVIII entitled "Work Assignments and Restrictions," Section 2 provides:

> Assignments and Details to positions of higher responsibility in excess of thirty (30) calendar days will be in writing (S.F. 52) and will be placed in the employee's personnel folder. It is further agreed that all assignments and details to higher level positions in excess of forty-five (45) calendar days shall be effected by temporary or permanent promotions.

Article XXII deals with "Merit Promotional Policy." Section 17 of that article states:

> Selection for details to a higher level position will be made from qualified employees within each shop or organizational segment whose names are on the appropriate active register and shall not exceed forty-five (45) calendar days. Employees will not be placed on any assignment for the purpose of promotionally upgrading the position through classification review.

Article XXIV entitled "Details and Temporary Promotions" states:

> Section 1. The Employer and the Union agree that all details and assignments in excess of thirty (30) calendar days shall be in writing and will become a part of the employee's Official Personnel Folder. Details and assignments will be made in accordance with Article XXII above.
>
> Section 2. All assignments and details to higher level positions in excess of forty-five (45) calendar days shall be effected by Temporary and/or Permanent promotion.

The grievance giving rise to the Application was filed by Russell E. Galloway, WG-8 Aircraft Worker, on March 4, 1975. Galloway alleged that he had been assigned to a higher level position without proper paperwork, SF 52, or proper pay. According to Galloway this kept him from receiving proper credit in his Official Personnel Folder and kept him from receiving credit under the Merit Promotion Plan. The relief sought by Galloway was to have the time retroactively documented and placed in his personnel folder and retroactive pay for services he performed at the higher level, WG-10.

Evidence discloses that prior to Galloway's grievance, on February 20, 1975, Galloway's supervisor wrote the following recommendation to the Activity's Civilian Personnel Office:

> 1. Mr. Russell E. Galloway, Check No. 36044, for the past three (3) years has been performing the work of journeyman mechanic, WG-10 level. He has worked various jobs that he has been assigned, working independently and with limited supervision. He has an excellent job approach and attitude and I highly recommend him for WG-10 level mechanic. During the three (3) years he has assumed the duties of a WG-10 mechanic without hesitation and has performed them in an excellent manner. His primary responsibility is reworking and trouble shooting of the fuel systems of T-2 Aircraft.
>
> 2. Please put this in Mr. Galloway's Official Personnel Folder for future reference.

During the course of the grievance the Activity's Wage and Classification Division of the Personnel Office conducted an audit of Galloway's position. On the basis of the audit the Activity concluded that Galloway's position was properly described in his Job Description 5956 and that he was properly classified at the WG-8 grade level. The Activity advised Galloway that under the circumstances, it found no reason to sustain the grievance.

At Galloway's request an additional on-site job audit of his position was completed. On June 20, 1975, Galloway was again advised that the duties of his position constituted those normally assigned to an aircraft worker and that his position was properly classified at the WG-8 level. He was advised that the relief sought in his grievance could not be granted.

On November 11, 1975, Applicant advised the Activity it was not satisfied with the grievance decision and requested arbitration under Article XXXII of the agreement. On December 30, 1975, the Activity gave its final rejection on the grounds that the grievance is on a matter covered by a statutory appeal procedure.

It is the Applicant's position that Galloway was assigned to duties called for in Job Description 5277, WG-10, for a period exceeding 45 calendar days as specified in Article XVIII, Section 2; Article XXII, Section 17; and Article XXIV without an SF-52 effecting a temporary or permanent promotion. According to the Applicant, Galloway was misassigned to a higher level position when he was assigned to work called out in Job Description 8852, WG-10, instead of WG-8, Job Description 8852, which his rate or grade level called for.

Applicant contends that the matter does not fall under the Classification Appeals procedure because the job descriptions in question were already classified and have been in effect for several years. According to the Applicant, the only decision to be made is which job description Galloway was working under. The Applicant contends that his issue falls under the jurisdiction of the negotiated agreement.

Applicant states that Galloway was promoted and the grievance rejected on the basis of a statutory appeal procedure solely for the purpose of denying Galloway the right to receive back pay. 1/

It is the Activity's position that the agreement does not and cannot permit arbitration of the issues raised in the grievance. According to the Activity the parties spent a significant effort in reviewing Galloway's assignments, and as reflected in the Classifying Office's analysis and evaluation, the duties performed were properly graded at the WG-8 level. According to the Activity, Federal Personnel Manual Supplement 532-1, Subchapter 7-2 is applicable. It further states that the award of an arbitrator would of necessity involve a threshold decision on the appropriateness of the Activity's job grading action. This decision, states the Activity, the arbitrator cannot make because of the Order's provisions excluding from the grievance procedure of the negotiated agreement any matters for which a statutory appeal procedure exists.

In light of the question concerning the applicability of a statutory appeals procedure, as stated previously, the matter was submitted to the Civil Service Commission for a determination. In its response the Commission stated:

> Part 532 of the Civil Service Regulations (5 CFR) provides for the right of a wage board employee to appeal his assigned classification — including the title, series, and grade of his position — if the employee feels that his responsibilities and the duties being performed warrant a different classification. An employee challenge, such as this one, to the accuracy of the grade, title and/or series reflected by the position description of the position to which the employee has been officially assigned is, by any other name, still a challenge to that employee's assigned classification. As such, it is a matter appropriately resolved through the statutory classification appeals procedure. The procedure is grounded in Section 5346(c) of Title 5, U. S. Code, which accords the Commission final and binding authority regarding the correct occupations and grades of positions compensated through prevailing rate systems. (Prevailing rate systems cover employees, like the grievant, whose jobs are classified in wage grades.) Detailed procedures for the filing of classification appeals may be found in Subpart G of Part 532 of the Code of Federal Regulations.

Section 13(a) of Executive Order 11491, as amended, provides that a negotiated agreement may not cover matters for which a statutory appeal procedure exists. A statutory appeal procedure exists which is applicable to the matters raised by Galloway in the grievance of March 3, 1975. Accordingly, I find that the grievance is not on a matter subject to arbitration in an existing agreement.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business July 22, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: July 7, 1976

LEM R. BRIDGES, Regional Administrator
Atlanta Regional Office

Attachments:
1. Civil Service Commission Reply
2. Service Sheet

1/ I have been advised that Galloway was promoted to WG-10 effective in July, 1975.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
12-7-76

811

Mr. Donald M. MacIntyre
National Representative
District 14, American Federation of
Government Employees, AFL-CIO
8020 New Hampshire Avenue
Hyattsville, Maryland 20783

Re: National War College
Case No. 22-6619(CA)

Dear Mr. MacIntyre:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1), (3) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that the Complainant has failed to submit sufficient evidence to establish a reasonable basis for the instant complaint and, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

May 27, 1976

Mr. Donald M. MacIntyre
National Representative
District 14, American Federation
of Government Employees
8020 New Hampshire Avenue
Hyattsville, Maryland 20783
(Cert. Mail No. 453117)

Re: National War College
Case No. 22-6619(CA)

Dear Mr. MacIntyre:

In the above-captioned case which you filed on behalf of AFGE, Local 1935, you allege that the respondent Activity had engaged in conduct violative of Sections 19(a)(1), (3) and (6) of Executive Order 11491, as amended. After investigating the allegations in your complaint, I have decided that further processing is not warranted and would not serve the purposes of the Order.

Your complaint alleges that on September 24, 1975 and again on October 20, 1975, when the parties to the complaint met to negotiate the ground rules under which future contract negotiations would be conducted, the Activity refused to grant the Union's request that two particular bargaining unit employees be allowed to attend the meeting as members of the Union bargaining team. You further allege that the Activity refused at the September 24, 1975 ground rules session to negotiate with the Union without having first exchanged formal written proposals.

The investigation revealed that the second and third allegations in your complaint concerning,respectively, the October 20, 1975 meeting and the Activity's insistence on exchanging written proposals, were not included in the informal pre-complaint charge filed with the Activity by Mr. Alstaetter, President of AFGE, Local 1935 by letter of September 25, 1975. In Report Number 16, the Assistant Secretary held that failure to file a prerequisite charge with the party against whom the complaint is lodged justifies dismissal of the complaint. Accordingly, I am dismissing the last two allegations in your complaint for failure to meet the requirements of Section 203.2 of the Rules and Regulations of the Assistant Secretary.

With respect to the 19(a)(6) allegation regarding the alleged refusal to allow two employees to attend the September 24, 1975 bargaining session, the investigation revealed that the parties exchanged correspondence prior to the meeting concerning who would attend as representatives of each party. Although the correspondence stated that Mrs. O'Keefe, a bargaining unit employee, would attend the meeting, no mention was made of the names of the other two employees whose presence was requested by the Union at the September 24, 1975 meeting. The parties had not discussed the attendance of these particular employees and no prior arrangements had been made to excuse these employees from their regularly assigned duties. After the Union's request was denied, and after further attempts to discuss ground rules, the Union bargaining team left the meeting. Thereafter, on October 20, 1975, the parties reached agreement on ground rules and on January 14, 1976, completed negotiations for an agreement.

I find that the refusal of the Activity to allow the Union to be represented by representatives of its own choosing, and the Activity's attempt to discuss the ground rules in the absence of the Union's requested representatives was a probable violation of Section 19(a)(6) of the Order. In Fort Jackson Laundry Facility, Fort Jackson, South Carolina, A/SLMR No. 242, the Assistant Secretary found that the Activity had violated Section 19(a)(6) of the Order by precluding the attendance of a particular union representative at a "formal" meeting as that term is used in Section 19(e) of the Order. The Assistant Secretary stated that:

> It is not within the purview of management to decide who fulfills that aspect of Section 19(e) which requires that "labor organization(s) shall be given the opportunity to be represented at formal discussions" of this nature. The right to choose its representatives at such discussions must be left to the discretion of the exclusive bargaining representatives and not to the whim of management.

Although the number of employees who will be granted official time for contract negotiations and the amount of official time granted are negotiable between the parties, this does not negate the right of the Union to be represented by a reasonable number of individuals of its own choosing, provided that the employees are prepared to use their annual leave or leave without pay if the Activity does not agree to grant official time sufficient to cover the time the employees spend in negotiations.

In this case, although the number of employees requested was not reasonable, as evidenced by the fact that these employees did, in fact, participate in the subsequent contract negotiations, no prior arrangements had been made for their participation. In light of this, and the fact that

the parties subsequently reached agreement on ground rules and negotiated an agreement, I am dismissing the 19(a)(6) allegation. In Vandenberg AFB, 4392d Aerospace Support Group, Vandenberg AFB, California, FLRC No. 74A-77, the Federal Labor Relations Council found that, where the activity had refused to negotiate on one occasion but indicated its willingness to return to the bargaining table on the following day, no violation should be found even though a technical violation of Section 19(a)(6) had occurred. The Council stated that it,

> "feels strongly that in appropriate factual situations, such as that in this case, similarily brief interruptions of negotiations with a de minimus effect should not warrant the finding of a violation. Rather, an isolated incident which results in such a brief interruption should be examined in the context of the totality of the respondent's bargaining conduct for a determination as to whether it would effectuate the purposes of the Order to find a violation when no further benefit would accrue from that finding and from the resultant remedial order."

With regard to the 19(a)(3) allegation stemming from the September 24, 1975 ground rules session, your complaint did not cite any conduct on the Activity's part which could be construed as an attempt to "sponsor, control, or otherwise assist a labor organization." Accordingly, I am dismissing this allegation.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may, within ten (10) days after you are served with this dismissal, appeal this action by filing a request for review with the Assistant Secretary and serving the Respondent and this office with a copy. A statement of service should be included with your request for review.

Your request must contain a complete statement of the facts and reasons upon which it is based,and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington,D.C. 20216 not later than close of business June 11, 1976.

Sincerely,

Frank P. Willette
Acting Regional Administrator

cc: James S. Murphy
Major General, USAF
Commandant,National War College
Fort Lesley J. McNair
Washington,D.C. 20319

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-7-76

Mr. Hal Barrett, Jr., GLR 812
International Association of Machinists
and Aerospace Workers, AFL-CIO
6500 Pearl Road, Suite 200
Cleveland, Ohio 44130

Re: Naval Air Rework Facility
Marine Corps Air Station
Cherry Point, North Carolina
Case No. 40-6777(GA)

Dear Mr. Barrett:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability in the above-captioned case.

In considering your request for review, new questions appeared to have been raised which were not clearly answered by the Civil Service Commission when the instant matter was initially referred to it by the Regional Administrator. Under these circumstances, I requested the Civil Service Commission to review its earlier determination in which it found that the subject matter of the instant grievances was subject to a statutory appeal procedure. In its most recent reply, a copy of which is attached, the Civil Service Commission has advised me that the matter which is the subject of the instant grievances is a claim of misclassification and,therefore, a matter which is appropriately resolvable only through the classification appeals procedure. Therefore, I find that the instant grievances are not on matters subject to the parties' negotiated grievance or arbitration procedures.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability, in which he dismissed the subject Application, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

NAVAL AIR REWORK FACILITY
MARINE CORPS AIR STATION
CHERRY POINT, NORTH CAROLINA

Activity

and

LOCAL LODGE 2297
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO

Applicant/Labor Organization

Case No. 40-6777(GA)

REPORT AND FINDINGS
ON ARBITRABILITY

Upon an Application for Decision on Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, an investigation of the matter has been conducted by the Regional Administrator. The Civil Service Commission was contacted and a copy of the reply is attached.

Under all circumstances, including the positions of the parties and of the Civil Service Commission and the facts revealed by the investigation, I find and conclude as follows:

Local Lodge 2297, International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as the Applicant, filed the Application for Decision on Grievability or Arbitrability on December 11, 1975. The Applicant seeks a decision as to whether or not two grievances are on a matter subject to arbitration under an existing agreement.

The Applicant is the exclusive representative for an activity-wide unit of wage grade employees consisting of approximately 1,800 employees. The current labor agreement was effective for a two year period beginning on March 9, 1973.

The grievances in question consist of two separate grievances, both filed on August 27, 1975. Two employees are involved in each grievance. The grievances are the same and allege, in substance, that the affected employees have performed duties at "the journeyman level above their Rating Guide and Civil Service job grading standard." The grievances request that the affected employees be paid in accordance with the negotiated agreement for the higher level duties that the employees have and are performing.

Article XVIII, Section 3 and Article V, Section 2 1/ are the provisions in the agreement alleged to have been violated. Article XVIII, Section 3 reads:

> The Employer agrees that to the extent possible efforts will be made to assign work within the proper rating of employees, as defined by established Navy rating guides; and in this regard will compensate employees on the basis of the highest level of duties assigned as a substantial portion of the job assignment continuously for a representative period of time; provided it can reasonably be determined that such assignments meet the criteria for compensation as outlined in appropriate regulations. However, the Employer shall refrain from distributing higher level duties among bargaining unit employees to avoid compensating employees at the higher level. It is further agreed

1/ In alleging violation of Article V, Section 2, the August 27, 1975, grievances particularized that the activity failed to grant the grievants merit promotion opportunities. As the Applicant has made no allusion to this provision in the Application, it has not been treated in my Report.

> where it can reasonably be determined in advance that employees in the Unit will be required to perform a majority of their duties above the level of their rating, for periods in excess of thirty days, that qualified and eligible employees will be selected and temporarily promoted to the higher level positions, for periods not to exceed 90 days. If an assignment to higher level duties exceeds 90 days, consideration will be given to either effecting a permanent promotion or temporarily promoting another employee to the higher level position. It is further agreed that the Union shall have the right to consult with the Employer in regard to any alleged inequities in connection therewith.

On September 23 and 24, 1975, the Activity responded to the two grievances. The Activity, in returning the grievances without action, claimed that Article XVIII, Section 2 provides a procedure which should be adhered to. That contractual provision reads:

> Any employee in the Unit who feels that his job or position is improperly rated or classified, shall have the right to request through his supervisor, that his job rating or classification be reviewed. The employee may be accompanied by his Shop Steward in presenting this request and discussing it with the supervisor and personnel of the Civilian Personnel Department. The Employer agrees to conduct an examination of the employee's work assignments to determine whether or not the rating or classification is proper. As a part of their examination, the Employer will talk personally with the employee, his supervisor, and the Shop Steward. Such discussion will include how the rates were established, the type of work performed, the skill required in relation to other rates in the same work series. The Employer agrees to consider fully any information which the employee or his Union Representative may wish to present, and to discuss his findings with the employee, and the employee's representative upon request. If satisfactory resolution of the employee's complaint is not reached, the Employer will furnish the affected employee with the basis for his findings in writing which shall also include his appeal rights.

On October 1, 1976, the Applicant invoked arbitration under the terms of the agreement. On October 15, 1975, the Activity, in its rejection of the Applicant's October 1, 1975, invocation, took the position that the matter raised in the grievances was not appropriate under the negotiated grievance procedure since job grading disputes are subject to statutory appeals procedure.

In order to determine whether or not a statutory appeals procedure exists, the Regional Administrator referred the question to the Civil Service Commission (CSC). In its reply, a copy of which is attached, the CSC held that the matter which is the subject of the grievances (i.e., whether the higher level duties the grievants claim they are performing are properly classified at the journeyman level) is appropriate for resolution under the classification appeals procedure which is grounded in Section 5346(c) of Title 5, U. S. Code. Accordingly, based upon the interpretation of the CSC, the grievances are on matters subject to a mandatory statutory appeals procedure.

I, therefore, find and conclude that the grievances dated August 27, 1975, are not on matters subject to arbitration under the existing agreement.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary with a copy upon this office and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business April 23, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

B. R. WITHERS, JR.
Acting Regional Administrator

DATED: April 8, 1976

Attachments:
Appendix A
LMSA 1139

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF POLICIES AND STANDARDS
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

FEB 5 1976

Mr. Lem R. Bridges
Assistant Regional Director
for Labor-Management Services
U.S. Department of Labor
Labor-Management Services
Administration
1371 Peachtree Street, N.E., -Room 300
Atlanta, Georgia 30309

Dear Mr. Bridges:

This is in response to your request of January 7, 1976, for an interpretation of Commission administered appeals procedures in connection with a grievability/arbitrability dispute under E.O 11491, as amended (your reference 40-6777 GA).

This case concerns the allegations of four employees of the Naval Air Rework Facility that they have been performing, over extended periods, duties at the journeyman level for which they are not properly compensated. They all charge violations of the negotiated agreement (Article XVIII, Section 3) which requires, in part, "... efforts will be made to assign work within the proper rating of employees ... and in this regard (the Employer) will compensate employees on the basis of the highest level of duties assigned as a substantial portion of the job assignment continuously for a representative period of time ..."

The basic point at issue in this case can be stated as follows:

Are the "higher level" duties that the grievants allege they are performing properly classified at the journeyman level? This matter is appropriate for resolution under the classification appeals procedure. The procedure is grounded in Section 5346(c) of Title 5, U.S. Code, which accords the Commission final and binding authority regarding the correct occupations and grades of positions compensated for by prevailing rate systems. (Prevailing rate systems cover employees like the grievants whose jobs are classified in wage grades.) Detailed procedures for the filing of classification appeals may be found in Subpart G of Part 532 of the Code of Federal Regulations. Basically, these procedures provide for agency review of the correctness of an employee's job classification upon his request, issuance of a final agency decision regarding the classification, and subsequent appeal to the Civil Service Commission. Any appeal to the Commission

must be made within 15 days after receipt of the agency decision. This time limit may be waived in extraordinary circumstances, e.g. when the employee can show that he was not aware of the time limit.

Sincerely yours,

Arch S. Ramsay
Director

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
12-7-76

813

Mr. Frank D. Ferris
National Field Representative
National Treasury Employees Union
4510 (I) Oakland Gravel Road
Columbia, Missouri 65201

Re: Internal Revenue Service
St. Louis District Office
Case No. 60-4633(GA)

Dear Mr. Ferris:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the Application for Decision on Grievability or Arbitrability in the above-named case.

I find that the instant Application is procedurally defective because it was not filed within 60 days after the final written rejection of your request for arbitration was served on you by the Activity. Thus, it is clear that, although the Activity's final decision, specifically designated as such, rejecting arbitrability was dated March 2, 1976, the Application herein was not filed until June 14, 1976, more than 60 days after such decision. Therefore, such Application was not timely filed within the requirements of Section 205.2(a) of the Assistant Secretary's Regulations.

Under these circumstances, I find that dismissal of the instant Application for Decision on Grievability or Arbitrability is warranted, and your request for review, seeking reversal of the Regional Administrator's dismissal, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

August 18, 1976

Mr. Frank Ferris
National Field Representative
National Treasury Employees Union
and NTEU Chapter 36
4510 (I) Oakland Road
Columbia, Missouri 65201

In reply refer to:
60-4633(GA)

Dear Mr. Ferris:

The above captioned case initiated by the filing of an application for decision on grievability or arbitrability under Section 6(a)(5) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as the present application is untimely filed.

Section 205.2(a) of the Regulations of the Assistant Secretary requires an application for a decision on arbitrability to be filed within sixty (60) days of the agency's final rejection of arbitrability. A review of the pertinent documents submitted by the union in the present case conclusively establishes that the applicant has failed to comply with this requirement in this present case. Thus, the evidence discloses that the activity, by letter dated March 2, 1976, took the position that the issue involved was not arbitrable and stated that the response represented the agency's final decision. Thereafter, the instant application was filed on June 21, 1976, over one hundred (100) days later. 1/

I am, therefore, dismissing the application in this matter.

1/ In this regard, the National Treasury Employees Union (NTEU) takes the position that a subsequent letter from the activity dated April 21, 1976, was actually the final decision. I find this position to be without merit, inasmuch as the subject letter was a response to NTEU's request to place the issue of arbitrability before an arbitrator and a reiteration of its earlier (March 2, 1976) final decision.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other parties. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business September 2, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator
for Labor-Management Relations

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
12-9-76

814

Mr. Glenn H. Lee, Jr.
President, Local 2701
American Federation of Government
Employees, AFL-CIO
1557 St. Joseph Avenue
East Point, Georgia 30344

Re: National Archives and Records Center
Atlanta, Georgia
Case No. 40-7002(GA)

Dear Mr. Lee:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the Application For Decision on Grievability or Arbitrability in the above-named case.

The evidence reveals that you filed an Application for Decision on Grievability in the above-named case on April 23, 1976, although a final written rejection of the grievance by the Activity had not been received inasmuch as arbitration was not invoked. Thus, in agreement with the Regional Administrator, and based on his reasoning, I find that the instant Application is procedurally defective as an Application will not be processed by the Assistant Secretary until after all stages of a negotiated procedure have been exhausted and arbitration is invoked and rejected in writing. See, in this connection, Report on a Ruling No. 56 (copy enclosed).

Under these circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the Application For Decision on Grievability or Arbitrability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. — ROOM 300
ATLANTA, GEORGIA 30309

August 10, 1976

Mr. Glenn H. Lee, Jr., President
Local 2701, American Federation of
Government Employees, AFL-CIO
1557 St. Joseph Avenue
East Point, Georgia 30344

RE: NARS, National Archives and
Records Service
Atlanta, Georgia
Case No. 40-7002(GA)

Dear Mr. Lee:

The above-captioned case, initiated by the filing of an Application for Decision on Grievability or Arbitrability under Section 6(a)(5) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as the Application was not timely filed under the Assistant Secretary's Regulations.

Article VIII of the contract provides for a four-step grievance procedure, Steps A through D. Step C provides for a decision by the Regional Commissioner and Step D provides for presentation of the grievance to the Regional Administrator and a decision by him. If a grievance cannot be satisfactorily resolved under the procedures in Article VIII, arbitration may be invoked in accordance with Article IX. On November 11, 1975, Step C of the grievance procedure was invoked, and after meetings between AFGE and NARS, the Regional Commissioner in a letter dated March 11, 1976, advised you that the grievance was on a matter which was not grievable under the contract procedures. The Activity stated: "In view of our above stated position, we now consider the question of grievability to be closed." Evidence does not reflect that the grievance was presented to the Regional Administrator under Step D of the grievance procedure or that arbitration was invoked.

Section 205.2(b) 1/ of the Regulations provides as follows:

> " . . . an application for a decision by the Assistant Secretary as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, . . . must be filed within sixty (60) days after service on the applicant of a written rejection

1/ Section 205.2(b) was formerly Section 205.2(a).

of its grievance on the grounds that the matter is subject to the grievance procedure in the existing agreement, or is not subject to arbitration under that agreement: Provided, however, That such prescribed sixty (60) day period for filing an application shall not begin to run unless such rejection is expressly designated in writing as a final rejection."

The Assistant Secretary in his Report on Ruling No. 56, a copy of which is enclosed, stated in part:

> For the purposes of computing the sixty (60) day filing period of an Application for Decision on Grievability or Arbitrability under Section 205.2(a) of the Assistant Secretary's Regulations, there must be a final written rejection after the arbitration clause is invoked. (Emphasis added)

Inasmuch as arbitration was not invoked, the Activity did not provide its final written rejection within the meaning of Section 205.2(b) of the Regulations. Therefore, the application was not timely filed.

I am, therefore, dismissing the application in this matter.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216, not later than the close of business August 25, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services Administration

cc: Mr. E. J. Johnson, Regional Commissioner
National Archives and Records Service
1776 Peachtree Street, N.E.
Atlanta, Georgia 30309

Mr. David Wilson
Personnel Office
General Services Administration
1776 Peachtree Street, N.E.
Atlanta, Georgia 30309

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-9-76

815

Mr. Dean Glenn
532 Douglas Drive
Logan, Utah 84321

Re: Directorate of Distribution
Ogden ALC
Hill AFB, Utah
Case No. 61-2963(CA)

Dear Mr. Glenn:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted. It was noted particularly in this regard that no evidence was introduced to show that the Respondent had knowledge with respect to the union affiliation of its employees.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

Mr. Dean L. Glenn
Management Analyst
532 Douglas Drive
Logan, Utah 84321

Mr. S. Reed Murdock
Attorney
Office of the Staff Judge Advocate
Hill AFB, Utah 84406

Certified Mail #

Re: Case No. 61-2963-CA

Gentlemen:

The above captioned case alleging violations of Sections 19(a)(1) and (2) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted as:

a. A reasonable basis for a complaint involving Mr. Dee's temporary promotion has not been established as it was not shown that the Respondent was motivated by union animus in announcing the temporary promotion of Mr. Dee.

b. The portion of the complaint involving a pattern of discrimination in past cases was not timely filed in accordance with Sections 203.3(a)(2) and 203.2(b)(3) of the Regulations of the Assistant Secretary.

c. The following incidents raised in the attachments to the complaint were not properly pre-charged in accordance with Section 203.2 of the Regulations:

(1) The November 28, 1975 complaint by Mr. Jack Right.

(2) The December 2, 1975 statement by Mr. Kay Collings.

(3) The Janaury 14, 1976 statement by Mr. Kay Collings.

(4) The September, 1975 statement by Colonel Orzen.

(5) The January 27, 1976 statement by Mr. Kay Collings.

(6) The January 29, 1976 letter from Mr. E. Riley Sheen.

d. The body of the February 3, 1976 complaint was procedurally defective as it was not sufficiently specific as to dates and individuals involved in the alleged violations in accordance with Section 203.3(a)(3) of the Regulations.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.7(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business

Sincerely,

Cullen P. Keough
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-9-76

816

Ms. Joan Greene
2032 Cunningham Drive #201
Hampton, Virginia 23666

and

Ms. Sallie L. Estell
Executive Vice-President
NAGE Local R4-106
P. O. Box 606
Langley AFB, Virginia 23666

Re: 4500 Air Base Wing
Langley Air Force Base, Virginia
Case No. 22-6699(CA)

Dear Ms. Greene and Ms. Estell:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint, which alleges violations of Sections 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis for the complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

With regard to the August 6, 1975, events, I find that there is insufficient evidence to establish that a grievance had, in fact, been "filed" with the Respondent. The rights that Complainant Greene sought to have enforced were not again brought to the attention of management until October 3, 1975, and I agree with the Regional Administrator's findings with regard to the events of October 3. It was at that time clear that Complainant Greene was grieving; a discussion was held; and Greene was allowed to have her representative present.

With regard to the alleged Section 19(a)(6) violation, I find that there is insufficient evidence to support this allegation. There is no showing that any duty to meet and confer arose at any time in the context of the events herein; nor is there a showing that the exclusive bargaining representative for the unit which includes the Complainants made any request to negotiate, or filed a complaint.

Accordingly, and noting also that matters raised and/or documents received for the first time in the request for review stage of the proceedings will not be considered by the Assistant Secretary (see Report on a Ruling No. 46, copy enclosed), your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET

PHILADELPHIA, PA. 19104
TELEPHONE 215-597-1134

June 1, 1976

Ms. Joan Greene
2032 Cunningham Drive
Hampton,Va. 23566
(452148)

Ms. Sallie Estell
9 Glenmore Drive
Poquoson,Va. 23662
(452149)

Re: 4500 Air Base Wing, Langley
Air Force Base
Case No. 22-6699(CA)

Dear Ms. Greene and Ms. Estell:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and carefully considered. It does not appear that further proceedings are warranted since no reasonable basis for the complaint has been established.

The complaint alleges that Respondent violated Sections 19(a)(1) and 19(a)(6) of the Order by failure of its agent, Colonel Thomas J. Moran, Base Chaplain, to properly resolve a grievance filed by Ms. Greene.

The investigation revealed that on August 6, 1975, while Ms. Greene was working at her desk, Colonel Moran was passing by and he was told by her that she had a grievance and that apparently she wanted her representative to be notified. He did not do so nor did he take any other action on the matter. Ms. Greene took no immediate steps to pursue the matter. Thus, no written grievance was filed nor did she orally renew her request. On October 3, 1975, Ms. Greene approached Colonel Moran and told him she had a grievance to discuss with him, namely that her immediate supervision was being imposed by a non-commissioned officer and she felt that her job description indicated that immediate supervision should come from the chaplain himself. During the course of the discussion, Ms. Greene asked the Colonel to notify her representative, Ms. Estell. Colonel Moran said he would not do so but suggested that she could do this by using a telephone available to her at her own desk. While Ms. Greene was calling Ms. Estell, the Colonel left, apparently to discuss with the Civilian Personnel Officer whether or not an oral grievance was proper and whether she was entitled to representation by the exclusive representative. Ms. Greene returned from her telephone call, found the Colonel absent and returned to work. Thereafter, later the same day, the Colonel, Ms. Greene and Ms. Estell met and discussed the grievance.

The August 6 incident falls short, in my estimation, of putting the Colonel on notice that a grievance was being filed. The off-hand manner in informing the Colonel that something was bothering Ms. Greene and the failure of any subsequent renewal of the request would bring a reasonable person to assume that there was no grievance before him. Moreover, on October 3, when Ms. Greene approached the Colonel, he readily discussed with her the grievance even though it was informal in nature and he acquiesced in her request for union representation. He,thereafter, did discuss the grievance with the complainant and the union representative. No evidence was introduced to show that the later discussion of the grievance was anything but proper within the meaning of the Executive Order. The facts show that the Colonel discussed with Ms. Greene her grievance immediately, did not deny Ms. Greene the right to have a union representative present during a discussion of her grievance nor dispute the right of the exclusive representative to participate. The hiatus of a few hours between the request and the actual grievance meeting does not suggest a violation. In these circumstances, I find that you have not shown a reasonable basis for establishing a complaint.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. 20216 not later than close of business June 16, 1976.

Sincerely,

Kenneth L. Evans
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-13-76

817

Ms. Elzea R. Feehan
President, Local 3457
American Federation of Government
Employees, AFL-CIO
100 Smith Drive
Metairie, Louisiana 70005

Re: U.S. Department of the Interior
Geological Survey
Gulf of Mexico OCS Operation
Case No. 64-3040(CA)

Dear Ms. Feehan:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Regional Administrator, that the evidence is insufficient to establish a reasonable basis for the instant complaint and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

August 19, 1976

Ms. Elzea R. Feehan, President
Local 3457, American Federation
of Government Employees, AFL-CIO
1000 Smith Drive
Metairie, Louisiana 70005

Re: U. S. Department of Interior
Geological Survey
Gulf of Mexico OCS Operations
Case No. 64-3040(CA)

Dear Ms. Feehan:

The above captioned case alleging violations of Sections 19(a)(1) and (2) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You allege that on three different occasions, involving four positions, Ms. Elaine Scherer failed to receive promotions due to anti-union considerations on the part of management.

According to your information Ms. Scherer became a union officer in May 1974, and thereafter, along with other union officers, engaged in several confrontations with management. Subsequently, Ms. Scherer applied for the following positions which are the only ones which are specified in your charge and in the complaint.

Accounting Clerk (Mineral Royalties)
GS-501-4 (two positions with known promotional potential)
Announcement No. 75-42;

Records Clerk, GS-301-5
One Position
Announcement No. 75-36;

Secretary (Stenography), GS-318-5
One Position
Announcement No. 75-34.

In the first instance Ms. Scherer was found to be qualified and referred to the selecting official along with four other applicants. The Merit Promotion Policy Handbook provides that where there are five or fewer qualified applicants all will be referred to the selecting official without being ranked by an evaluation panel.

In the second instance the personnel office in Rolla, Missouri determined that Ms. Scherer was not qualified because she lacked the required specialized experience. Of the ten applicants nine were similarly found to be not qualified.

In the third instance Ms. Scherer and three other applicants were rated as best qualified by an evaluation panel and referred to the selecting official in alphabetical order.

The selecting official is allowed to select any referred applicant.

During his investigation, the New Orleans Area Administrator examined the merit promotion records in question as well as the official personnel folders of the selectees and of Ms. Scherer. There were no irregularities in the merit promotion procedures employed nor was Ms. Scherer found to be patently better qualified than the selectees. It should be noted that in Announcement No. 75-34, the only instance in which an evaluation panel was employed, the highest ranked applicant was not selected and Ms. Scherer was not ranked higher than the selectee.

The only evidence submitted in support of your charge of Union animus is that Ms. Scherer is an above average employee as evidenced by her receipt of a quality step increase in August 1974, that she became a union officer in May 1974 and in that capacity came into conflict with certain management officials on a number of occasions, and was not selected for the positions discussed above. However, Ms. Scherer was last promoted in July 1971, several years before she became a union officer.

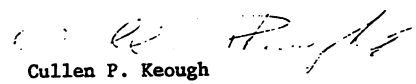
In view of the above it is my finding that a reasonable basis for the complaint has not been established in that you have not shown that the failure of Ms. Scherer to be selected for promotion and her being found not qualified for the position of Records Clerk was based in whole or in part on anti-union considerations. Accordingly you have failed to sustain the burden of proof imposed by Section 203.6(e) of the Regulations of the Assistant Secretary.

I am, therefore dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216. A copy of the request for review must be served upon the undersigned and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business September 3, 1976.

Sincerely,



Cullen P. Keough
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-13-76

Mr. William Steele
14061 Cork Street
Garden Grove, California 92644

818

Re: Long Beach Naval Shipyard
Naval Air Station
Los Alamitos, California
Case Nos. 72-5848 thru 72-5854
and 72-5865 thru 72-5878

Dear Mr. Steele:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of your complaints, which allege violations of Sections 13(a), 19(a)(1) and (4), and 23 of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis for the instant complaints has not been established and, consequently, further proceedings in this matter are unwarranted.

The instant complaints, which are all related, allege basically that the Respondent has, by certain actions, maligned the Complainant, has taken certain "punitive reprisals" against him, and, further, has failed to consult and confer with him about his own grievances and the grievances of other employees whom he purported to represent. In the circumstances of these cases, I find that there is insufficient evidence to establish a reasonable basis for finding that the rights which the Complainant has as a supervisor/employee under the Order have been violated. Cf. Internal Revenue Service, Chicago District, A/SLMR No. 279, and Internal Revenue Service, Western Service Center, A/SLMR No. 280. Moreover, as to those portions of certain of the complaints herein which relate to the adverse action taken against the Complainant, Section 19(d) of the Order would preclude the consideration of such issues in the unfair labor practice forum as such issues can properly be raised under an appeals procedure.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaints, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: 415-556-5915

REGIONAL OFFICE
April 28, 1976

Re: Long Beach Naval Shipyard -
William Steele
Case Nos. 72-5849 thru 72-5854
72-5866 thru 72-5878

Mr. William Steele
14061 Cork Street
Garden Grove, CA 92644

Naval Air Station, Los Alamitos -
William Steele
Case Nos. 72-5848 and 72-5865

Dear Mr. Steele:

The above captioned cases alleging violations of Section 19 of Executive Order 11491, as amended, have been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as, at all times referred to in the complaints, Complainant was a supervisory official of Respondent, and thus under the Order cannot assert 7(d)(1) rights under 19(a)(1) of the Order. (Internal Revenue Service, A/SLMR Nos. 279 and 280). Further, the claims that arose from agency grievance procedures cannot be raised in an unfair labor practice complaint, absent a showing of discriminatory motivation or anti-union animus. (U. S. Navy, Naval Air Station, North Island, A/SLMR No. 452). It is further noted that Complainant has submitted no evidence in support of the 19(a)(4) allegation.

I am, therefore, dismissing the complaints in these matters.

I have considered Respondent's Motion to Dismiss. In view of my action in these cases, I find it unnecessary to rule on the Motion.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Area Administrator as well as the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secre-

tary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210 not later than the close of business on May 13, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-13-76

819

Mr. Richard H. Webster
National Representative
American Federation of Government
Employees, AFL-CIO
P. O. Box 14385
Phoenix, Arizona 85063

Re: Army and Air Force Exchange Service
Davis-Monthan Air Force Base,
Arizona
Case No. 72-5893

Dear Mr. Webster:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Objections in the subject case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the objections to the election in this matter should be overruled.

Accordingly, your request for review, seeking reversal of the Regional Administrator's overruling your objections, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

ARMY AND AIR FORCE EXCHANGE SERVICE DAVIS-MONTHAN AIR FORCE BASE, ARIZONA -ACTIVITY -AND- TEAMSTERS LOCAL 310, IND. -PETITIONER -AND- AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2924, AFL-CIO -INTERVENOR -AND- NATIONAL FEDERATION OF FEDERAL EMPLOYEES, LOCAL 81, IND. -INTERVENOR	)	CASE NO. 72-5893

REPORT AND FINDINGS

ON

OBJECTIONS

In accordance with the provisions of an Agreement for Consent Election approved on March 31, 1976, an election by secret ballot was conducted under the supervision of the Area Administrator, Los Angeles, California, on May 6, 1976. The results of the election, as set forth in the Tally of Ballots, are as follows:

Approximate number of eligible voters	188
Void Ballots	0
Votes cast for Teamsters Local 310	55
Votes cast for AFGE Local 2924	30
Votes cast for NFFE Local 81	1
Votes cast against exclusive recognition	44
Valid votes counted	130
Challenged ballots	1
Valid votes counted plus challenged ballots	131

Challenged ballots were not sufficient in number to affect the results of the election.

Timely objections to conduct affecting the election were filed by AFGE Local 2924 on May 11, 1976, and NFFE Local 81 on May 13, 1976, and are attached hereto as Exhibits A and B, respectively.

In accordance with Section 202.20 of the Regulations of the Assistant Secretary, the Area Administrator investigated the objections and has submitted his reports to the undersigned. Set forth below are the essential facts, positions of the parties, and my findings with respect to the objections involved herein.

Objection 1

AFGE and NFFE contend that the poll in the Recreation Building was changed from the Card Room, the originally agreed upon site, to the Kachina Room, without notification of these labor organizations. Further, they allege that since the Kachina Room was found on May 5, 1976, to be unsuitable, the site was changed to the Recreation Room Lobby/Lounge Area, and therefore this poll was not held at the site as posted and agreed upon by the parties in the Agreement for Consent Election. AFGE contends that, due to this change, only 12-13 employees were able to vote at this poll.

The Activity contends that subsequent to the signing of the election agreement, it discovered that the Card Room would not be available for use as a poll on May 6. The Activity Personnel Manager then changed the election notices to show the Kachina Room, after consulting the Compliance Officer supervising the election. When the parties disapproved of this room on May 5, the Activity contends that it moved the polls to the adjacent Lobby/Lounge Area. Petitioners contend it does not recall being notified of the change to the Kachina Room, but was satisfied with the use of the Lobby/Lounge Area.

The investigation discloses that the Compliance Officer believed that the Activity would notify the three labor organizations of the change to the Kachina Room, and in fact, at least one, NFFE was so notified prior to May 5. The actual polling area used was contiguous with the Kachina Room, the site referred to in the Notice of Election. Signs in the Kachina Room directed voters to the adjacent Lobby/Lounge Area, and no evidence was presented that any voter was precluded from voting due to difficulty in locating the poll. Further, the investigation discloses that 15 employees voted at this poll, which represents 54% of the voters eligible to vote in the Recreation Building, a better than average voter turnout for Federal Sector representation elections.

The undersigned concludes there is insufficient evidence that the change of polling site in the Recreation Building affected the results of the election. I find Objection No. 1 without merit and hereby overruled.

Objection 2

AFGE and NFFE contend that the polling site at the Main Exchange Building was held in the warehouse area, not the stockroom area as posted in the Notice of Election and agreed to by all parties in the Agreement for Consent Election. Further they contend that the area was noisy, and in very close proximity to rank-and-file pro-Teamsters. They contend these protests were voiced to the Compliance Officer supervising the election, who refused to move this poll to another area, and instructed the labor organization if they were dissatisfied they could file post election objections.

The Activity contends that the polling site in the Main Exchange Building was in the area known as the stockroom. It asserts that all official publications and correspondent use the term "stockroom" and that there is no "Teamster warehouse area" in existence on its premises.

employees walking around the perimeters of the polling area may have made campaign-type remarks, e.g., "Vote Teamsters"; however, no evidence was presented that any eligible voter was specifically told to "Vote Teamster" or was dissuaded from voting by these alleged remarks. I find that the mere wearing of partisan buttons does not constitute conduct that could have affected the outcome of the election, inasmuch as it was not accompanied by conversation with the eligible voters waiting to cast their ballots. NLRB v. Crest Leather Mfg. Co., 71 LRRM 3022 (1969); NLRB v. Laney and Duke, 63 LRRM 2553 (1966); see also Milchem, Inc., 57 LRRM 1395.

Further, while it is to be desired that representation elections are conducted in laboratory conditions, it is the view of the undersigned that every variance from desired conditions does not require that the election be declared invalid. Each case stands alone and is to be viewed in the context of the particular circumstances. I find that there is insufficient evidence to conclude that the close proximity to the polling area of employees who supported the Teamsters impaired or intimidated employees from expressing their voting sentiment.

Accordingly, the undersigned finds there is insufficient evidence to conclude that the free choice of the employees was impaired and overrules Objection No. 3.

Objection 4

AFGE and NFFE contend that during the morning hours at the Main Exchange, an unidentified employee characterized as a "Teamsters strong supporter", wearing a Teamsters button, was working in close proximity to the polling area.

The investigation discloses that various employees working near the polling area were wearing Teamster buttons. However, no evidence was presented that such persons interfered with the voting process, spoke with specific employees, or engaged in campaigning, nor is it allegedthat such persons were agents of Petitioner. (See Objection No. 3, supra.) Further, all observers signed the Certification on Conduct of Election without protest. Inasmuch as AFGE and NFFE have thus failed to sustain the required burden of proof that this unidentified employee engaged in objectional conduct affecting the outcome of the election, it is concluded that the objection is without merit. See Assistant Secretary's Report No. 39. Accordingly, Objection 4 is overruled.

Objection 5

AFGE and NFFE contend that Steve Lagneaux, Teamster observer at the Main Exchange poll, left the polling site at 2:30 p.m., walked into the working area, and conversed with various employees. It is alleged that Lagneaux was "giving out information to employees".

The investigation discloses that Lagneaux, whose regular duties involve working in an area near the polling site, did briefly leave the poll during the afternoon hours to assist a fellow employee in a work assignment. The investigation discloses that he did no campaigning during this time, and his conversations with employees outside the polling area were solely work-related. I find that Lagneaux engaged in no objectionable conduct, and therefore it is concluded that this objection is without merit. Accordingly, Objection No. 5 is overruled.

Petitioner terms the area a "stockroom/warehouse" and contends that although it was a noisy area, primarily due to air-conditioning, that it knew of no better site to utilize and therefore did not object.

The investigation discloses that the poll was in an area used partially as a stockroom and a warehouse; either or both terms describe it adequately. It was a noisy area, adjacent to substantial pedestrian traffic from the stockroom shelves to the main store entrance. However, it was somewhat separated from working employees by stacked boxes and other such obstructions. As in objection No. 1, supra, there was no evidence presented that employees were precluded from voting by the use of the term "stockroom" on the Notice of Election. Indeed, 72% of voters eligible to vote at this poll cast their ballots, a substantially better than average turnout in Federal Sector representation elections.

Concerning the Compliance Officer's conduct in responding to AFGE's and NFFE's displeasure with this polling site, I find that no other suitable area was available in this building that was 1) available; 2) adequately separated from management officials offices; and 3) in an area to which voters could easily be re-directed from the already-posted and plublicized site. Further, the Compliance Officer was using her best judgement and, acting as an agent of the Assistant Secretary, conducted herself properly when informing the labor organizations that the only vehicle for their protests was post-election objections. Indeed, both AFGE and NFFE filed objections, and requested and obtained thorough investigations of their protests.

Therefore, the undersigned finds that the use of the Exchange stockroom did not affect the outcome of the election as there is insufficient evidence to conclude that there was voter confusion about the location of the polling site, enough to disenfranchise voters. Furthermore, I cannot see where the complained of Compliance Officer's instructions to parties to the election could have affected the outcome of the election.

Accordingly, Objection No. 2 is found to be without merit and overruled.

Objection 3

AFGE and NFFE contend that rank-and-file pro-Teamster supporters, wearing buttons that read "Vote Teamsters Local 310" were working within three feet of the polling area, while many others passed back and forth around the polling area during the voting hours. Thus, eligible voters, they assert, were forced to "run a gauntlet of Teamster supporters, wearing Teamster buttons" in order to enter the polling area.

The investigation discloses that there were many employees in the area of the polling site during voting hours and although a small number were at work stations in close proximity to the polling area, the vast majority were walking between the stockroom shelves and the door to the Main Exchange Building in the course of performing their regular job assignments. It is undisputed that some of these employees were wearing pro-Teamster buttons. However, no evidence was presented that any of these employees were agents of Petitioner; nor that they engaged in conversation with specific eligible voters; nor that they obstructed the path of any eligible voters attempting to enter the voting area; nor that they entered the voting area themselves, except during the time they cast their ballots. All persons entering the polling area were instructed to remove all partisan campaign buttons, and in fact, did so. Some of the

Objection 6

AFGE and NFFE contend that the Compliance Officer supervising the polling site at the Main Exchange building left the poll for 15-20 minutes at 3 p.m. During the time she was absent, they allege that 3 employees voted, one voting a challenged ballot, and that "Teamster supporters" wearing partisan buttons were allowed into the voting area, and made campaign remarks.

The investigation discloses that the Compliance Officer did leave the poll as alleged, during which time several employees voted. The objecting parties do not allege, nor does the investigation disclose any irregularities in the voting procedures. Further, the investigation discloses that no employees were allowed to enter the voting area wearing partisan buttons, and while some employees outside the area may have made statements such as "Vote Teamsters" during this period, there is no evidence that they engaged any eligible voter in conversation, nor obstructed the path of an eligible voter attempting to enter the polling area. Further, all observers signed the Certification on Conduct of Election without protest. While it would have been preferable for the Compliance Officer to remain at the polling site for the entire period of time, it is concluded that no objectionable conduct occurred during her absence. Accordingly, Objection No. 6 is found to be without merit and overruled.

Objection 7

AFGE alleges that Richard Jessie, a supervisor, told their representatives Richard Webster, Richard Hepner and Jessie Matthews that he was going to drive "all his people" to the Recreation Building poll to vote.

The Activity contends that Jessie made essentially the same statement to its personnel manager and his successor, and that Jessie was advised that such action might violate management's obligation to remain neutral during the election period. The Activity states that Jessie did not drive any employees to the polls.

The investigation discloses that Jessie did make remarks similar to those alleged by AFGE, and was advised by the Activity not to take such action. In fact, Jessie drove no employees to either poll on May 6, nor did he take any action relating to his subordinate employees' voting activities on that date. Accordingly, the undersigned finds there is insufficient evidence that the free choice of the employees was impaired and overrules Objection No. 7.

Objection 8

AFGE contends that Teamster Representative Pete Cinquemani gave out Teamster buttons and talked to Activity employees during working hours just outside the Main Exchange on May 5. It alleges that the employees were carrying out their job duties when Cinquemani stopped them to campaign.

The investigation discloses that both Teamster and AFGE representatives were outside the Main Exchange Building on May 5, talking with employees and distributing buttons (Teamsters) and literature (AFGE). There were various employees in the same area, some of whom were on break time, some of whom were not. It is undisputed that both Teamsters and AFGE were campaigning, while there is a question as to whether or not all the employees to whom Cinquemani gave (or attempted to give) buttons were on duty at the time. However, the parties' agreement concerning campaigning was only that they would refrain from all campaign activities inside the activities' buildings. AFGE does not contend that the alleged conduct was a violation of this side agreement, but assuming it was, the Assistant Secretary has ruled that he will not police parties' side agreement. See Assistant Secretary's Report No. 20. There were no complaints or protests to the Activity concerning Cinquemani's activities, and I find that there was no unequal treatment by the Activity of the various labor organizations. Accordingly, the undersigned finds Objection No. 8 without merit and it is hereby overruled.

Objection 9

AFGE "protests the mailing" made by the Teamsters to eligible voters on or about Tuesday, May 4, 1976. It does not state what was in this "mailing", nor what specific item in the mailing was objectionable.

The investigation discloses that the Teamsters sent a letter, dated April 30, 1976, through the U. S. Postal Service, to employees at the Activity, which arrived at employees' work sites May 3 or May 4. AFGE literature arrived at the work sites in the same manner, at the same time. Inasmuch as AFGE does not specify what sections of this letter comprise objectionable conduct, nor does it allege that Teamsters gained access to employees through this mailing while similar access was denied to AFGE, I find that AFGE has failed to sustain its required burden of proof. Accordingly, Objection No. 9 is overruled by the undersigned.

Objection 10

NFFE contends that "all unions" were denied access to the facilities in spite of the "ruling" that employees could be contacted on break time.

The investigation discloses that the only campaigning agreement made by the parties was that they would not campaign inside the Activities' premises (See Objection No. 8, supra). Further, all unions were given one opportunity each by the Activity to hold meetings and campaign in the conference room of the Area Exchange offices, and the break room in the Main Exchange Building. There is a "ruling" that employees may be contacted on their break time, by employee organizers, in non-work areas. Charleston Naval Shipyard, A/SLMR No. 1. However, NFFE does not allege that employee organizers were precluded from contacting eligible voters, since none of the union representatives involved herein are employees of the Activity. And, assuming arguendo that the parties' side agreement was violated, this in itself does not constitute objectionable conduct, where, as here, there is no allegation, or does the investigation disclose, that the Activity engaged in unequal treatment of any one of the three labor organizations. See Assistant Secretary's Report No. 20. Therefore, it is concluded that this objection is without merit. Accordingly, Objection No. 10 is overruled by the undersigned.

Having found that no objectionable conduct occurred improperly affecting the results of the election, the parties are hereby advised that, absent the timely filing of a request for review, a run-off election between Petitioner, Teamsters Local 310, and No Union will be conducted under the supervision of the Area Administrator.

Pursuant to Section 202.20(f) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of these findings and contemplated action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties.

A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on August 31, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Gordon M. Byrholdt
Regional Administrator
San Francisco Region
Room 9061 Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-14-76

Mr. Franklin L. Corley
Area Director 820
Department of Housing
and Urban Development
1801 Main Street, Jefferson Square
Columbia, South Carolina 29201

Re: Department of Housing and Urban Development
Columbia Area Office
Columbia, South Carolina
Case No. 40-6906(RO)

Dear Mr. Corley:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Objections to the extent that merit was found with respect to two objections filed by the Petitioner, American Federation of Government Employees, AFL-CIO, Local 3654 (AFGE), in the above-named case.

In my view, the objection regarding disparate treatment toward the AFGE by allegedly interfering with the Local President's attempt to post campaign literature, while at the same time granting such permission to another employee, and the objection concerning the alleged derogation of the AFGE and the demeaning of an AFGE national representative in the presence of an assembled group of employees at the April 26, 1976 meetings, raise questions of fact and policy which can best be resolved on the basis of record testimony.

Accordingly, I am hereby remanding the subject case to the Regional Administrator for the purpose of issuing a notice of hearing in accordance with the Assistant Secretary's Regulations.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, COLUMBIA AREA OFFICE
COLUMBIA, SOUTH CAROLINA

Activity

and

LOCAL 3654, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Petitioner

Case No. 40-6906(RO)

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on April 27, 1976, an election by secret ballot was conducted under the supervision of the Area Administrator, Atlanta, Georgia on May 10, 1976.

The results of the election, as set forth in the Tallies of Ballots, are as follows:

TALLY OF BALLOTS FOR PROFESSIONAL EMPLOYEES

Approximate number of eligible voters	9
Void Ballots	0
Votes cast for inclusion in the nonprofessional unit	3
Votes cast for a separate professional unit	4
Valid votes counted	7
Challenged Ballots	0
Valid votes counted plus challenged Ballots	7

Challenges are not sufficient in number to affect the results of the election.

A majority of valid votes counted plus challenged ballots has not been cast for inclusion in the nonprofessional unit.

IF PROFESSIONAL EMPLOYEES VOTE AGAINST INCLUSION IN THE NONPROFESSIONAL UNIT COMPLETE THE FOLLOWING

Void Ballots	0
Votes cast for Local 3654, AFGE, AFL-CIO	5
Votes cast against exclusive recognition	2
Valid votes counted	7
Valid votes counted plus challenged Ballots	7

Challenges are not sufficient in number to affect the results of the election.

TALLY OF BALLOTS FOR NONPROFESSIONAL EMPLOYEES

Approximate number of eligible voters	102
Void Ballots	0
Votes cast for Local 3654, American Federation of Government Employees	41
Votes cast against exclusive recognition	46
Valid votes counted	87
Challenged Ballots	0
Valid votes counted plus challenged Ballots	87

Challenges are not sufficient in number to affect the results of the election.

Voting was conducted in one location for all eligible employees of the Columbia Area Office. The two groups of voters comprise all professional and nonprofessional employees of the Office of Housing and Urban Development, Columbia, South Carolina, excluding management officials, employees engaged in Federal personnel work in other than a purely clerical capacity and supervisors as defined in Executive Order 11491, as amended.

Timely objections to conduct improperly affecting the results of the election were filed on May 14, 1976, by the Petitioner. The objections are attached hereto as Appendix A. Petitioner's attachments to the objections are not included.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Administrator has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to each of the objections 1/ involved herein:

Objection No. 1 - I shall treat the following as the first objection:

> . . . Think!!!! contains falsehoods and the timeliness of its distribution was such that the union had no time to offer a rebuttal. This sheet was placed on employees' desks (HUD) between 0730 hours and 0800 hours on Friday, May 7, 1976. This was the last working day prior to the election being held on Monday, May 10, 1976. We could not pass out any literature and/or refute this sheet on election day because we had previously agreed not to do any campaigning on this date.

The leaflet containing a series of questions which are alleged to be false is attached as Appendix B. A disclaimer at the bottom of the page informs the reader that the flyer does not express the opinions of management. Mona Meadows, GS-6, Program Aide in the Community Planning and Development Division of the Columbia Area Office, is the unit employee who states that she distributed the leaflet.

In preparation for the conduct of the election, the Petitioner and the Activity entered into a side agreement which established certain ground rules that no campaigning or electioneering would be conducted by any party on the day of the election.

Petitioner has furnished no additional evidence to support its allegations.

The Activity's position is that all employees were given the opportunity to express themselves through equal means, namely, the use of the bulletin board. This usage was prescribed by ground rules agreed to mutually by management and AFGE with the restrictions that the author must so indicate that the ideas contained were his own and in addition, that no literature would be distributed on Monday, May 10, the date of the election. Even though not in accordance with ground rules, Petitioner had the option to circulate a rebuttal later on the day of the flyer's distribution.

One issue is whether the language in the flyer circulated by Meadows contains gross misrepresentations of a material fact sufficient to set aside the election. If it is found that the flyer contains misrepresentations, consideration must be given to whether they were so deceptive as to interfere with the employees' free choice in selecting their bargaining representative. Therefore, it is important to determine whether these employees could reasonably evaluate the statements in the flyer as campaign propaganda thereby minimizing their impact.

The Activity makes no reference to the flyer's contents. The leaflet, in the form of rhetorical questions, makes no definitive statements, true or false, even though some answers are suggested by the phraseology of the questions. Its message is to Vote No. It urges employees to reject the union because it is ineffective. While misrepresentations are not condoned in an election campaign, there may exist half-truths, exaggerations, self-serving statements. From my evaluation of the flyer, I conclude the flyer in the absence of blatant lies and trickery, is not so deceptive as to deprive the voters their ability from recognizing it as campaign propaganda. Thus the voters are capable of making their own decisions on the worth of the statements without the aid of a rebuttal period for the union.

1/ The objections are somewhat ambiguous and unclear. I have segregated the objections according to the issues raised.

Aside from whether or not the flyer contained misrepresentations, there is yet a more fundamental consideration. The contents of the flyer cannot be attributable to the Activity. Not only is there a disclaimer at the bottom of the flyer, but no evidence has been adduced to show that the individual or individuals responsible for the preparation and distribution of the flyer was (were) speaking on behalf of the Activity. Therefore even if the flyer contains misrepresentations, the Activity cannot be held responsible for them.

Based on the foregoing, I find no conduct took place which improperly affected the election. Accordingly, Objection No. 1 is found to have no merit and is hereby dismissed.

Objection No. 2 - I shall treat the following as the second objection:

> The employee who passed out this sheet refused to discuss the subject in any manner. This Union will defend any employee's right to participate and/or refrain as required but we certainly object to any person making defamatory and untrue statements against the union. This alone could have had an improper effect upon the results of the election.

Ottis J. Smith, Chief Steward of Local 3654, AFGE and a member of the proposed unit, observed Meadows disbributing the "Think" flyer. When questioned by him about its contents, Meadows refused to discuss any of its issues either on work premises or in non-duty areas. Meadows denied authorship of the leaflet and has refused to name the writer.

Petitioner has furnished a signed statement of employee Smith in which Smith describes his discussion with Meadows.

The Activity asserts that even though an atmosphere of "buyer beware" may have prevailed at the time of distribution of the flyer, the union had the option during the ensuing workday to distribute or post a rebuttal statement since the author of the flyer would not discuss it.

Meadows distributed the literature with its prominent disclaimer of any management sanction; Meadows also has denied its authorship. Therefore she became merely a delivery agent for an unknown person's material and under no obligation to answer any of Smith's questions or to engage in any meetings/discussions he tried to arrange. Meadows had no responsibility to defend either position. It is incumbent upon the objecting party to meet its burden of proof to show that this lack of cross communication produced an adverse effect on the outcome of the election. In the absence of such proof, I find that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 2 is found to have no merit and is hereby dismissed.

Objection No. 3 - I shall treat the following as the third objection:

> When the Union Representative tried to post informational sheets, management interferred, intimidated and coerced her because she had not obtained clearance from management officials prior to the posting, yet the HUD employee had the sanction of management of passing out the literature or else they failed to initiate similar types of reprisal against her. At least none known.

Petitioner posted on the bulletin board a vote "yes" AFGE handbill (Appendix C) and two letters from AFGE Local Presidents. 2/ The Activity told Charles Hartis, then President of the Petitioner to remove these items until permission to post was requested and granted in accordance with a prior agreement with the Union. Petitioner removed the literature. On or about April 23, 1976, Petitioner requested permission to repost the literature, i.e., the two letters and Exhibit C. A definitive answer to the request to repost this material was not given by the Activity until approximately one week prior to the election. Since Petitioner had not been assured of posting rights during this tine, it had not prepared any additional campaign material. At no time was Petitioner allowed to hand distribute its literature on work premises as the individual employee apparently was permitted.

2/ The letters addressed to Petitioner dated April 12, 1976, and April 16, 1976, are from Local 3409, AFGE (Greensboro, North Carolina) and Local 3667, AFGE (Louisville, Kentucky) respectively. Each refers to the forthcoming election; each urges support for Petitioner.

Petitioner contends it had never encountered any administrative problems with posting of material in previous years and it had observed other items being posted on the board without prior permission. Once the Petitioner's request to post was submitted through channels, its progress was deliberately impeded.

The Activity argues it was justified in granting the employee permission to distribute literature through the "equal treatment for all employees" policy. In addition, the mutually agreed to ground rules which prescribed the method of posting material on the bulletin board was binding on Petitioner.

While the Assistant Secretary will not undertake to police any side agreement the parties may make concerning activities during the campaign, he does take note of any conduct in breach of this side agreement which has an independent improper effect on the conduct of the election. 3/ Apparently, such a side agreement arrangement had been made by the parties in regard to the posting of various types of union material on the bulletin board. The question is whether the Activity in permitting the distribution of the anti-union literature by an employee constitutes conduct which may have improperly affected the results of the election. When the Activity granted clearance to the employee to distribute the anti-union material at the work site, it bestowed on the employee a status almost equal to the status of a party to the election.

By allowing an employee who is not a party to the proceeding and who does not represent a party who had intervened in the proceedings the right to electioneer at the work site, the Activity gave to the employee electioneering privileges she was not entitled to. The Activity not only gave to the anti-union faction an equivalent status to which it was not entitled, it granted to the anti-union faction privileges it denied to Petitioner. 4/

Such action takes on an added degree of importance when the difficulty encountered by the Petitioner in the conduct of its own campaign is taken into consideration. While I find that the permission to post election materials granted one week prior to the election provided sufficient time for the posting of these materials, the problems encountered by the Petitioner in obtaining permission to post when compared with the relative ease accorded the employee in her distribution of the handbills, give further substance to a finding of disparate treatment. I do not consider the disclaimer at the bottom of the flyer to be conclusive evidence that the expressions therein were those of an individual employee expressing her own opinion and not that of an employee acting as an emissary or house organ of the Activity. The weight and effect of this statement cannot be truly evaluated when one realizes that the Activity permitted distribution of the flyer on work premises, an internal distribution method not authorized for use by the union.

While I cannot precisely measure the impact of the Activity granting to an anti-union employee electioneering privileges it denied to Petitioner, it is reasonable to conclude that the conduct constitutes clear disparate treatment. It, therefore interfered with the voters' free choice. Accordingly, Objection No. 3 is found to have merit.

Objection No. 4 - I shall treat the following as the fourth objection:

> When Mr. Berryhill opened the morning session, on April 26, 1976, he first of all passed out a copy of the changes in Executive Order 11491, as amended. Of course, when the employees looked at this they began asking questions on their rights under the order yet when I and Marie Vevik tried to answer; Mr. Berryhill on more than one occasion stated he thought we were out of order. The Union Representatives disagreed based on (1) my answers were from a

3/ Report No. 20, issued December 8, 1970, states in relevant part: While the parties may desire to make side agreements of the above nature, the Assistant Secretary will not undertake to police such agreements and the breach thereof, absent evidence that the conduct constituting such breach had an independent improper effect on the conduct of the election or the results of the election.

4/ Geological Survey Center, Menlo Park, California, A/SLMR No. 143.

referenced quote or section of 11491 as amended, and/or the Directors Memo which seemingly the employees thought they had a right to questions and were entitled to an answer; (2) Marie's statement and/or what she read of the employees rights were in the Ala. agreement as referenced. Yet the sections she referred to were almost a verbatim from the order itself. Her answer as to how the Union became involved; again, Marie was trying to explain that under Department of Labor guidelines any Labor Organization could seek an election if they showed an interest of 30% or more and were the petitioning party — such as members and signatures requesting an election be held to determine if A.F.G.E. Local 3654 would obtain Exclusive Recognition or no union based on the employees' secret vote; (3) Since Mr. Berryhill had presented copies of the changes in the order at the morning session and especially during the afternoon session whereby management had provided approximately 25 copies of the order as published. Mr. Berryhill and I had an interesting discussion on what was to be discussed or not and I referred him to the Director's Memo, which stated /details of the election, employees rights will be explained and a question and answer session will follow./

In a memorandum sent to all employees dated April 22, 1976, the Activity announced that a meeting on labor relations would be held April 26, 1976. All employees were urged to attend. Franklin Corley, Director, invited Kenneth Blaylock, National Vice President, AFGE, and James Berryhill, HUD Regional Labor Relations Specialist, to conduct two one-hour sessions (morning and afternoon) for discussion of election details, and explanation of employee rights, with a question and answer period following. 5/ Earnest Jackson, National Representative for the Fifth District, AFGE, was appointed to speak for Blaylock who did not attend. Berryhill was present. Because of the one-hour time constraints, Berryhill advised Jackson prior to the first session that the format of the sessions should be confined to discussion of Sections 1(a), (7) and (10) of the Executive Order.

Petitioner asserts Berryhill's treatment of Jackson and Vevik, President of the Petitioner, during their attendance at the two sessions, does not comport with Corley's memorandum promising an open and free discussion period.

The Activity points out that it made the decision to limit discussion of certain sections of the Order because of the limited timeframe.

Approximately half of the eligible employees attended each session. When Berryhill opened the second session, he told the employees that unlike the morning session, the discussion would stick to the subject and not go far afield. During the second session, Jackson read from the Executive Order. Berryhill told Jackson he was out of order. According to a statement not denied by the Activity, Berryhill said that he would "file against him" if he kept it up.

Although Petitioner submitted scant evidence in support of its contention that Berryhill told Jackson he would file against him if he continued to talk as he had, there is no denial that Berryhill did make the statement in the presence of approximately 60 employees.

It is not necessary to determine whether or not Jackson strayed beyond the predetermined limits during the discussion thereby breaching the ground rules of the meeting. Assuming, however, that Jackson did stray and did discuss matters which went beyond Sections 1(a), 7 and 10 of the Order, the Activity's method in curtailing him went beyond the bounds of permissible conduct. The Activity has not denied that Berryhill stated in front of half the voters that he would "file" against Jackson. Whether he intended to "file" is not the issue; whether there was justification is not the issue. The issue is whether the Activity's representative made a statement which could be interpreted as a threat to take action against Petitioner's representative. The threat to take such action was made in front of an assembled group of employees. It may have created the impression that dire consequences may be created as a result of the union activities of union representatives. By demeaning the Petitioner's representative in the presence of employees, the

5/ The memorandum states, in part: "Details of the election will be discussed, employee rights will be explained and a question and answer session will follow."

the Activity derogated the union and thereby breached its obligation of neutrality. Accordingly, Objection No. 4 is found to have merit.

Objection No. 5 - I shall treat the following as the fifth objection:

The thrust of the Objection is harassment upon the Local President Vevik by:

1. Not permitting her to participate from the speakers' table in the two sessions of the April 26 meeting;

2. Discussing with her the possibility of charging her with annual leave for her attendance at both sessions;

3. Issuing a warning to her on her usage of Government telephones for union business when she made calls relative to the upcoming election;

4. Stating that the proper authority to contact with questions or problems concerning the election is the Area Director rather than DOL or the labor organization.

Petitioner has furnished a statement in which Vevik describes the alleged harassment. According to Vevik, Deputy Area Director Nixon summoned Vevik prior to the meeting and informed her that at the employees meeting she could not participate with Jackson in front of the employees. He further informed her that she could attend both meetings and would be allowed to have her "say." After she attended both April 26, 1976, sessions, the Activity informed Vevik that she would be charged annual leave for one meeting. However, Vevik was not charged annual leave. Further, according to Vevik, Nixon warned her about making long distance calls on government time involving union business. Additionally, Vevik states that Nixon told her that she should take her problems to the office of the Activity's Area Office rathern than bring them to the attention of the Petitoner or to the Department of Labor.

The Activity asserts that the Local President's knowledge of the labor-management program is somewhat limited and considered Vevik's attendance at both sessions as a training tool. The Activity admits it counseled Vevik about the use of Government telephones for union business and the possibility of the annual leave charge. The Activity admits it requested Vevik to seek guidance from the Activity's Director prior to initiating calls to DOL or to the Union.

I shall treat the analysis in the same numerical order as shown above:

1. The ground rules for each of the sessions of the April 26, 1976, meetings provided for the Activity and the Petitioner to each have a representative. Blaylock, who was initially designated to represent the Petitioner, was replaced by Jackson. Petitioner was therefore represented by a representative. The fact that Vevik was not allowed to represent Petitioner may have affected her pride or it may have ruffled her. However, there is no reason for the Activity to grant Petitioner two representatives. I fail to see how the Activity's refusal to give Vevik certain privileges constitutes harassment or that it in any way may have improperly affected the election results.

2. All eligible employees were granted time to attend either the morning or afternnon session of the April 26 meeting. If the Activity chose to allow the President the same leave time as other attendees, the Activity would be required to charge Vevik leave if she attended both sessions. I cannot infer from the Activity's conduct that the Activity attempted to harass Vevik or to interfere with employees' Section 1(a) rights. Vevik was not the spokesman for Petitioner; there is no evidence that the Activity's decision was punitive. Moreover, Vevik was not charged annual leave and, further, the decision to charge Vevik for an hour's annual leave and the announcement of the decision to Vevik constitutes an act which, in my view, is de minimis. I find

that under those circumstances, it did not improperly affect the election results.

3. Petitioner has not submitted evidence that the Activity's warning to Vevik concerning the use of the telephone was intended to interfere with her or Petitioner in communicating with employees. Indeed, Vevik states that the Activity warned her about making only long distance telephone calls on union business. Under those circumstances, the Petitioner has failed to sustain the burden of proof that the Activity's warning to Vevik improperly affected the election results.

4. The only evidence in support of this allegation is Vevik's statement in which she states that Nixon told her that she "should take all . . . problems to the Area Office Director or to his attention instead of the Union or the Department of Labor." The Activity does not deny Vevik's version. It states that Vevik's knowledge of the labor management program is somewhat limited and the Activity has attempted to educate as well as to participate in the program with a bilateral attitude.

The Activity does not deny nor does it explain Nixon's suggestion to Vevik. Although, under certain circumstances, particularly if the employee was forced or required to clear with the Activity such conduct might be considered to be interference with employees' Section 1(a) rights and therefore might be grounds for setting aside an election. However, Petitioner's evidence is limited to the single instance; there is no evidence that Nixon insisted that Vevik clear only with the Activity and not with the Department of Labor or with the Union. Accordingly, in the absence of evidence of coercion or threat of coercion and, further, in light of the isolated nature of the conduct, I find that the Petitioner has not furnished the burden of proof that the Activity, by suggesting or telling Vevik to clear with the Activity rather than with the Petitioner or Department of Labor, improperly affected the election results.

Based on the foregoing, Objection No. 5 is found to have no merit and is hereby dismissed.

Having found that Objections No. 3 and 4 have merit, the parties are advised hereby that the election held on May 10, 1976, is set aside and a rerun election will be conducted as early as possible, but not later than 30 days from the date below, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business August 5, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: July 21, 1976

Seymour X Alsher

SEYMOUR X ALSHER
Acting Regional Administrator
Atlanta Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
12-22-76

821

Mr. Mark D. Roth
Staff Counsel
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Avenue, N.W.
Washington, D.C. 20005

Re: U.S. Marine Corps Supply Center
Albany, Georgia
Case No. 40-6885(CA)

Dear Mr. Roth:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of your amended complaint in the above-named case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted. With respect to the Respondent's alleged failure to negotiate over the impact or implementation of its security operations, it was noted particularly that there is insufficient evidence that the Activity refused to negotiate on impact or implementation upon the request of the Complainant. Cf. U.S. Department of Air Force, Norton Air Force Base, A/SLMR No. 261.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

July 26, 1976 ATLANTA, GEORGIA 30309

Mr. Earl M. Ricketson
National Representative
American Federation of
Government Employees, AFL-CIO
Post Office Box 328
Alma, Georgia 31510

Re: Marine Corps Supply Center
Albany, Georgia
Case No. 40-6885(CA)

Dear Mr. Ricketson:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigation and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation discloses that Local 2317, American Federation of Government Employees, AFL-CIO, is the exclusive representative of a unit of graded and ungraded employees of the Marine Corps Supply Center, Albany, Georgia. There is a labor-management agreement applicable to the unit in effect. On July 18, 1975, Arbitrator George S. King issued his opinion and award in the so-called Castleberry case. According to the arbitrator the issue in this case was defined by the parties as follows:

> Has the Command violated the Negotiated Agreement . . . when it denied overtime pay to Mr. Artie M. Castleberry and group for the purpose of subjecting them to search?

The arbitrator found that there was a violation of the Negotiated Agreement and awarded the involved employees overtime pay. 1/ On August 29, 1975, a petition for Review and Request for Stay of Award was submitted by the Department of Defense and Department of Navy to the Federal Labor Relations Council (FLRC). FLRC accepted the petition and granted the stay on December 19, 1975, in its Case No. 75A-98. In his opinion and award the arbitrator also made a recommendation to the Command that more specific guidance for the handling of future searches be implemented.

1/ The remedy provides, in relevant part: "Any employee proved to have been detained longer than six minutes on June 26, 1975, shall have his overtime pay calculated by the same method regularly used by the employer in calculating overtime."

The Area's investigation discloses that on October 6, 1975, at the conclusion of the shift, a search of vehicles was conducted as the employees departed the premises in an effort to find three missing handguns. As a result of this search, departure of some of the employees was delayed for up to approximately two hours. Thereafter, on October 7, 1975, when approximately thirty-nine (39) employees submitted claims for overtime to cover this delay the claims were immediately rejected by the Respondent.

Complainant alleges that the Respondent violated Sections 19(a)(1) and (6) of the Order by failing to consult on implementation of certain recommendations of the arbitrator concerning specific guidance to be followed in conducting future searches and by failing to consult on the impact and implementation of the search of October 6, 1975, before conducting the search. The union does not dispute management's right to make a decision to conduct a search.

Complainant also alleges that the search of October 6, 1975, was conducted as reprisal for the union's efforts in representing employees in the grievance which culminated in the arbitrator's award. Also, the union contends that the search was conducted in a manner so slipshod and lackadaisical and so foredoomed to failure as to demean the union and cause the employees to conclude that the union could not effectively represent them. It is also contended that Respondent's rejection of the claims for overtime had the effect of demeaning and denigrating the union.

It is the Respondent's position that: (1) the sole purpose of the search was a legitimate search for missing government handguns; (2) the manner in which such a search is conducted is a right reserved to management by Section 12(b)(5) of the Order; (3) there must be a clear showing of animus by the employer and that mere criticism of the manner in which such search is conducted will not supply the necessary animus; (4) the timing of the search in relation to the arbitrator's decision would not support a bad faith finding since Respondent had not lost the Castleberry case as there was no final decision on the appeal; and (5) Respondent was justified in rejecting the employees' overtime claims because until the FLRC rules otherwise such pay is not authorized by law. Respondent describes the search as a security search and contends that Section 11(b) of the Order expressly provides that the duty to bargain does not include matters with respect to an agency's internal security practices and that nothing could more clearly involve matters of internal security than the circumstances which gave rise to the October 6, 1975, search. As to Complainant's position that Respondent had an obligation to bargain with it over the impact of the decision to conduct the search, Respondent contends that Section 11(b) not only makes internal security matters permissive rather than a mandatory subject of bargaining but, more importantly, Section 11(b) specifically limits bargaining on impact to those situations where employees are adversely affected by a realignment of work forces or other technological change. As neither realignment nor technical

change is involved, Respondent was not required to negotiate on impact. Finally, Respondent contends that the arbitrator's recommendations as to specific guidance for the handling of searches in the future did not furnish a basis for negotiations between the parties nor did they give rise to substantive union rights under the Order. In summary the Respondent contends that Section 11(b) and 12(b)(5) of the Order render the subject matter of this complaint non-negotiable.

With respect to the allegation that Respondent failed to consult with the union subsequent to the arbitrator's award, as the award does not involve a change in working conditions or personnel policies and practices, Respondent was not required to notify the union.

As to the allegation that Respondent violated Section 19(a)(6) by failing to consult with the union during the interval between making a decision to conduct a search and conducting the search of October 5, 1975, I find that Respondent was not required to consult or to even notify the Union that it was about to undertake the October 6, 1976, search. Not only was internal security involved, but more importantly premature disclosure of the details of the search would have eroded or possibly destroyed the effectiveness of the search. Thus, I find that Respondent's decision not to consult with the exclusive representative was responsive to an immediate emergency and, therefore, not violative of Section 19(a)(6) of the Order. 2/

As to the allegation that the October 6, 1975, search followed so closely on the heels of the arbitrator's decision as to constitute reprisal against the union for its efforts to represent the employees, in my view the timing of the search, standing alone, fails to support a finding that Respondent's decision to conduct the search was for other than legitimate internal security considerations. In the absence of such evidence, I find that the decision to conduct the search on the October 6 date was not undertaken as reprisal against the Union.

With regard to Complainant's allegations that the manner in which the search was conducted demeaned the union in the eyes of the employees thereby causing the employees to conclude that the union could not effectively represent them, this is speculative. In the absence of a finding of anti-union animus or evidence in support of this allegation, there is no basis for this allegation. With respect to the rejection of the overtime claims of 39 claimants, although there was an initial rejection, Respondent has taken steps to process the claims. There is no evidence that the initial rejection was motivated in order to demean the Union nor is ther evidence to conclude that the rejection constitutes a per se violation of Section 19(a)(1) or (6). In light of the foregoing, particularly the Respondent's processing of the overtime claims, the matter is moot. The arbitrator's recommendation that the Respondent provide more specific guidance in the future for the handling of searches did not constitute a mandatory requirement to perform a particular act or to change a particular regulation in

2/ United States Dependent Schools European Area, A/SLMR No. 138.

the handling of searches. I agree with Respondent's argument that it was, at best, a gratuitous recommendation which was not related or reflected in the arbitrator's award for overtime compensation. That recommendation does not give rise to substantive rights under the contract or under the Order. Under the circumstances, there is no reasonable basis for complaint based upon Respondent's failure to abide by the arbitration award. 3/

Based on the above, there is no basis for a 19(a)(1)(6) complaint.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy on this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business August 10, 1976.

Sincerely,

Seymour X Alsher

SEYMOUR X ALSHER
Acting Regional Administrator
Labor-Management Services

3/ Compare: Aberdeen Proving Ground, A/SLMR No. 518.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-22-76

822

Mr. Stanley Q. Lyman
National Vice President
National Association of
Government of Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: General Services Administration
Region 1, Boston, Massachusetts
Case No. 31-10007(CA)

Dear Mr. Lyman:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (3) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted inasmuch as the pre-complaint charge requirements set forth in Section 203.2 of the Assistant Secretary's Regulations were not considered to have been met.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

September 17, 1976 In reply refer to Case No. 31-10007(CA)

Stanley Q. Lyman, National Vice President
National Association of Government Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: General Services Administration
Region I

Dear Mr. Lyman:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as no pre-complaint charge has been made pursuant to Section 203.2 of the Regulations of the Assistant Secretary and a reasonable basis for the complaint has not been established.

By letter dated April 13, 1976, you advised Respondent of alleged illegal solicitation of signatures by a rival organization and requested they institute measures to stop this alleged illegal solicitation of signatures. Your letter cannot be construed as a charging letter in that you fail to charge the Respondent with any violation of the Order. Moreover, the last paragraph of this letter states "it is hoped that direct action on your part will avert a possible unfair labor practice charge being filed because of Mr. Conte's action".

Respondent, on April 19, 1976, answered this letter and detailed the steps taken to correct any illegal solicitation of signatures. No further action was taken until you filed your complaint on June 1, 1976. Accordingly, you have failed to meet the requirements of Section 203.2 of the Regulations in that you did not charge the Respondent with a violation of the Executive Order prior to filing a complaint.

Your complaint alleges that the Respondent allowed AFGE to actively solicit signatures during the employees' official time. By

these actions, you conclude that the Respondent violated Section 19(a)(1) and (3) of Executive Order 11491, as amended. You submitted evidence in support of your complaint which indicated that an AFGE representative approached individuals on April 19, 1976 between 10:30AM and 2:30PM, within the JFK Federal Building lobby or the swing room to sign a petition. Further information was gathered that on April 9, 1976, an AFGE representative spoke with an employee allegedly at his work site and was conducted by the employee to several other floors so that he could obtain additional signatures.

You have produced no evidence of Respondent's knowledge of or involvement in either of these alleged solicitation of signatures and, in fact, you have failed to allege any Activity involvement.

The Complainant bears the burden of proof at all stages of the proceeding regarding matters alleged in its complaint, Rules and Regulations of the Assistant Secretary, Section 203.6(e). For the reasons set forth above, I find that the NAGE has not sustained its burden of proving Respondent Activity violated Section 19(a)(1) and (3) of the Order. I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, ATT: Office of Federal Labor-Management Relations, Washington, D.C. 20216, not later than the close of business October 4, 1976.

Sincerely yours,

MANUEL EBER
Acting Regional Administrator
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-22-76

Mr. Don Boyd 823
President, Local 3521
American Federation of Government
Employees, AFL-CIO
212 North Park
Cape Girardeau, Missouri 63701

Re: Social Security Administration
Cape Girardeau, Missouri
Case No. 62-4784(CA)

Dear Mr. Boyd:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1), (2), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

Moreover, I find that your request for review fails to meet the requirements of Section 203.8(c) and 202.6(d) of the Assistant Secretary's Regulations which, in part, provide that: "The request for review shall contain a complete statement setting forth facts and reasons upon which the request is based." The instant request for review does not contain such a complete statement.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 29, 1976

Mr. Gary Eason, District Manager
Cape Girardeau District
Social Security Administration
339 Broadway
Cape Girardeau, Missouri 63701

Mr. Don Boyd, President
American Federation of Government
Employees, AFL-CIO, Local 3521
212 North Park
Cape Girardeau, Missouri 63701

Re: Social Security Administration
Cape Girardeau District Office
and
American Federation of Government
Employees, Local 3521
Case Number: 62-4784(CA)

Dear Messrs. Eason and Boyd:

The above-captioned case charging violations of Section 19, Executive Order 11491, as amended, has been investigated and considered carefully.

Mr. Boyd's Complaint Against Agency (LMSA 61) alleged violations of Sections 19(a)(1), (2), (5) and (6) of the Executive Order by the Social Security Administration (SSA). He alleged three issues: (1) that supervisor Ray Jones made an unprovoked and unwarranted verbal attack upon Chief Union Steward Cletis Hanebrink before other employees in a December 3, 1975 staff meeting, (2) that delay in negotiations of a collective bargaining agreement were caused by management "stalling", and (3) that petitions for employee signatures requesting a representation election for decertification of Local 3521 were posted on one or more bulletin boards during the period of contract negotiations with the knowledge and consent of management.

It does not appear that further proceedings are warranted in this matter for reasons as set forth in the following paragraphs:

Issue No. 1 was improperly raised in the context of an unfair labor practice complaint since the unfair labor practice charged was filed after a grievance had been filed on the same issue, and Section 19(d) of the Order prevents consideration of an issue in both procedures. In his December 19, 1975 grievance Mr. Hanebrink sought as "specific personal relief" a public apology from Mr. Jones

"for his rude and obnoxious behavior", suggesting the apology be made "before the entire staff", as a consequence of alleged ridicule received. He accordingly coupled his proposed relief with the attack alleged, and is thus not entitled to multiple relief for the same incident.

Issues No. 2 and No. 3 are dismissed because a reasonable basis for these complaints has not been established as the result of a failure to bear the burden of proof, as required by Section 203.6 of the Assistant Secretary's Rules and Regulations. There is no concrete evidence in the instant case that the delay in contract negotiations resulted from management "stalling"; neither is there similar evidence that management aided, assisted, abetted or approved the postings of the petitions for decertification election signatures, which were posted in a nonwork "break" area at times and by persons unknown to management.

In view of my action, I find it unnecessary to rule on the merits of Respondent's Motion for Dismissal of the complaint in its totality.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216 not later than the close of business July 19, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator for
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-22-76

824

Mr. Leo Woodward, President
American Federation of Government Employees
Local 2250, AFL-CIO
Veterans Administration Hospital
Muskogee, Oklahoma 74401

Re: Veterans Administration Hospital
Muskogee, Oklahoma
Case No. 63-6897 (GA)

Dear Mr. Woodward:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the Application for Decision on Grievability or Arbitrability in the above-captioned case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the Application herein was not filed timely pursuant to Section 205.2(a) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the Application for Decision on Grievability or Arbitrability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

August 25, 1976

In reply refer to: 63-6897(GA)
VA, Veterans Administration
Hospital, Muskogee, OK/AFGE,
AFL-CIO, LU 2250

Mr. Leo Woodard, President
American Federation of Government Employees
AFL-CIO, Local Union 2250
Veterans Administration Hospital
Muskogee, Oklahoma 74401

Dear Mr. Woodard:

The above-captioned case, initiated by the filing of an Application for Decision on Grievability or Arbitrability under Section 6(a) (5) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted in as much as your application was untimely filed with this office.

In this regard, the record reveals that you filed a grievance with the Activity on September 17, 1975. By letter, dated October 30, 1975, you notified the Activity of the issues to be considered for arbitration, which had been requested, by letter dated October 16, 1975. The Activity by letter dated November 26, 1975, rejected your request for arbitration, stating the grievance was not grievable or arbitrable. This letter was designated as their final rejection in this matter. I might add, this letter also informed you that an appeal of their decision could be filed with the Assistant Secretary for Labor-Management Relations.

Your application was filed with this office on July 22, 1976, which is about seven (7) months from the date of the final written rejection of your request for arbitration, which was issued on November 26, 1975.

Section 205.2(a) of the Assistant Secretary's Rules and Regulations requires that an application must be filed with this office within sixty (60) days of a final rejection that is expressly designated as a final rejection.

I am, therefore, dismissing the application in this matter.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other parties.

A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, attention, Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business September 9, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator
Labor-Management Services Administration

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-22-76

825

Mr. Leo Woodward
President, American Federation of
Government Employees
Local 2250, AFL-CIO
Veterans Administration Hospital
Muskogee, Oklahoma 74401

Re: Veterans Administration
Hospital, Muskogee, Oklahoma
Case No. 63-6896(GA)

Dear Mr. Woodward:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the Application for Decision on Grievability or Arbitrability in the above-capitoned case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the Application herein was not filed timely pursuant to Section 205.2(a) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the Application for Decision on Grievability or Arbitrability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

August 26, 1976

In reply refer to: 63-6896(GA)
VA, Veterans Administration
Hospital, Muskogee, OK/AFGE,
AFL-CIO, LU 2250

Mr. Leo Woodard, President
American Federation of Government Employees
AFL-CIO, Local Union 2250
Veterans Administration Hospital
Muskogee, Oklahoma 74401

Dear Mr. Woodard:

The above-captioned case, initiated by the filing of an Application for Decision on Grievability or Arbitrability under Section 6(a)(5) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as your application was untimely filed with this office.

In this regard, the record reveals that you filed a grievance with the Activity on August 29, 1975. By letter dated October 15, 1975, you requested that the matter be referred for arbitration. The Activity, by letter dated November 26, 1975, rejected your request for arbitration, stating the grievance was neither grievable or arbitrable. This letter was designated as the final rejection in this matter. It is noted that this letter also informed you that an appeal of their decision could be filed with the Assistant Secretary for Labor-Management Relations.

The Application was filed with the Dallas Area Administrator on July 22, 1976, approximately seven (7) months from the date of the final written rejection of your request for arbitration (November 26, 1975).

Section 205.2(a) of the Assistant Secretary's Rules and Regulations requires that an application must be filed within sixty (60) days of a final rejection that is expressly designated as a final rejection.

I am, therefore, dismissing the Application in this matter.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other parties. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business September 10, 1976.

Sincerely,

THOMAS R. STOVER
Acting Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-23-76

826

Mr. Lee V. Langster
Executive Vice President
American Federation of
Government Employees,
Local 1395, AFL-CIO
165 North Canal Street
Chicago, Illinois 60606

Re: Social Security Administration
Region V, Chicago, Illinois
Case No. 50-13126(CA)

Dear Mr. Langster:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that the instant complaint is procedurally defective as it was filed more than 60 days from the date on which the final written decision on the charge was served on you. See Section 203.2(b)(2) of the Assistant Secretary's Regulations. In this regard, it was noted particularly that although you now allege that you did not receive a final decision on the charge from the Respondent, you indicated on the face of the complaint form that the Respondent's final decision on the charge was served on you on November 22, 1975. The instant complaint subsequently was filed by you on February 25, 1976.

Under these circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

SOCIAL SECURITY ADMINISTRATION,
REGION V,
CHICAGO, ILLINOIS,

Respondent

and Case No.: 50-13126 (CA)

LOCAL 1395, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES (AFGE), AFL-CIO,

Complainant

The complaint in the above-captioned case was filed on February 25, 1976, in the Office of the Chicago Area Administrator. It alleges a violation of Section 19 (a) (1), (2), and (4) of Executive Order 11491, as amended. The complaint has been investigated and carefully considered. It does not appear that further proceedings are warranted, inasmuch as the complaint has not been timely filed pursuant to Sections 203.2 (b) (2) and (3) of the Regulations of the Assistant Secretary. This Section requires that "if a written decision expressly designated as a final decision on the charge is served by the respondent on the charging party, that party may file a complaint immediately but in no event later than sixty (60) days from the date of such service." Further, the Regulations note that a complaint must be filed within nine (9) months of the occurrence of the alleged unfair labor practice or within sixty (60) days of the service of a respondent's written final decision on the charging party, whichever is the shorter period of time."

It is alleged that the Respondent violated Sections 19 (a) (1), (2), and (4) of the Order by failing to consult and confer with the exclusive representative concerning certain matters contained in a Memorandum of Understanding having an effective date of August 4, 1975.

Attachments to the complaint cite August 19, 1975, as the date of the commission of the unfair labor practice as it was the date the Regional Director of the Respondent allegedly implemented a part of a Memorandum of Understanding and rejected the other part despite efforts of the labor organization to consult, confer, or negotiate prior to implementation of any part of said memorandum. A November 17, 1976, memorandum of Respondent supplied by the Complainant and attached to the complaint indicates that attempts were made to meet with officers of the local union, however, these offers to meet were declined by the union. Additional information is supplied by way of reply to the charges. The memorandum is

Titled "Subject: Intent to File Unfair Labor Practice Charge - your memorandum of September 19, 1975." The first and last sentences of this memorandum read, respectively: "I have investigated the charges cited in your alleged unfair labor practice which we received on September 20, 1975". "By issuance of this memorandum, I feel that management's attempts to resolve the charges informally are complete." The memorandum is signed by the Respondent's Regional Representative.

I determine this November 17, 1975, memorandum in this matter to be final decision of the Respondent on the charge in this matter. Based upon the procedural requirements relating to timeliness, cited above, I find the complaint is untimely filed in that, given such a date, a filing of a complaint in the matter with the Chicago Area Office on February 25, 1976, is beyond the relevant sixty (60) day period 1/.

I am therefore, dismissing the complaint in its entirety.

Having found the complaint to be untimely, I find it unnecessary to pass on the merits of the 19 (a) (1), (2), and (4) allegations.

Pursuant to Section 203.8 (c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N.W., Washington, D. C. 20216, not later than the close of business

Dated at Chicago, Illinois this

R. C. DeMarco, Regional Administrator
U. S. Department of Labor
Labor-Management Services Administration
Federal Building, Room 1033B
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139, Service Sheet

1/ The complainant states on the face of the complaint filed with the Chicago Area Office that "...the final decision on the charge /was/ served on the party filing this complaint /on/ November 22, 1975."

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

12-23-76

827

Mr. Mark D. Roth
Assistant Counsel
American Federation of Government
Employees
1325 Massachusetts Avenue, N. W.
Washington, D. C. 20005

Re: Department of Defense
Smokey Hill ANG Bomb Range
Salina, Kansas
Case No. 60-4537

Dear Mr. Roth:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted. Thus, under the particular circumstances herein, I find that the evidence was insufficient to establish a reasonable basis for the allegation that the Respondent's conduct herein was in derogation of its bargaining obligations under the Order.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

July 26, 1976

Mr. George Treulieb, President
American Federation of Government
Employees, Local 2324
P. O. Box 9257 - Building 61
Fort Riley, Kansas 66442

In Reply Refer To:
60-4537(CA)

Dear Mr. Treulieb:

The above-captioned case alleging violations of Sections 19(a)(1) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. The allegations in the Complaint concern, among other things, the differing interpretations of the Memorandum of Understanding for Negotiation of Collective Bargaining Agreement (hereinafter "memo") which was signed by the parties on November 19, 1975 and was intended to serve as a guideline for upcoming negotiations. Paragraph 3d of the memo, the main area of dispute, concerns the amount of time to be given to the Union negotiators for contract negotiations. 1/ The Complainant (Union) contends that, pursuant to the memo, it has the option to switch negotiators at will, and that each employee who negotiates in behalf of the Union is entitled to 40 hours of official time. The Activity takes the position that each negotiating "slot" is entitled to up to 40 hours of official time, regardless of the number of different employees who might fill that negotiating "slot" during negotiations. The Activity relies upon the wording and intent of Section 20 of the Order 2/ and cites Philadelphia Naval Shipyard, (FLRC 72A-16, Report No. 36) which,

1/ "d. Negotiations will be on the clock to the extent each negotiating member of the Union team will be allowed a maximum of forty (40) hours of official time spent in negotiating during regular working hours for the purpose of negotiating a collective bargaining agreement."

2/ The pertinent section reads as follows:

"Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement. . . , except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the time spent in negotiations during the regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives." (emphasis added)

it claims, makes the union interpretation untenable under the provisions of the Order. That decision is an in-depth study of the purpose and limitations of official time for negotiations. The opinion covers the history of, and reasons for, the enactment of Section 20, and as such, addresses the issue of official time raised in the instant complaint.

Thus, although the issue in the Philadelphia Naval Shipyard involved the rearranging of work shifts for employees serving as union negotiators, the entire thrust of this decision was aimed at the reasonableness of the union's proposal. In this regard, in reaching a decision, the Council relied upon its Report and Recommendations on the Amendment of Executive Order 11491, (June 1971) under Official Time:

> "Upon consideration of all factors, we have concluded that the program will benefit by modifying present policy so as to permit the negotiating parties, when circumstances warrant, to agree to a reasonable amount of official time for employees who represent the union in negotiations during regular working hours. This change will enlarge the scope of negotiations and promote responsible collective bargaining. However, we believe it is essential that the amount of such official time authorized, while adequate to avoid undue hardship or delay in negotiations, should be expressly limited so as to maintain a reasonable policy with respect to union self-support and an incentive to economical and businesslike bargaining practices." (Emphasis added)

In that decision, the Council noted that the Union's proposals, if approved, would be that negotiations could go on indefinitely with the union negotiators at all times receiving their normal pay from the agency, an action ". . . clearly inconsistent . . . . with the intent of Section 20 . . ." In the instant case, the union's interpretation of the memo could create the same possible result; that is, one employee would negotiate for 40 hours on official time and then be replaced by a new employee, who would be entitled to another 40 hours of official time. With the substantial number of unit employees involved, the potential for creating such an unreasonable situation is obvious.

In consideration of the wording and intent of Section 20, and the facts and the decision in the Philadelphia Naval Shipyard case, as discussed above, I conclude that the interpretation of the memo by the Activity is the only possible interpretation consistent with the Order. Accordingly, I find no merit to the Complainant's allegation that the Activities interpretation of the subject memo constituted a violation of Section 19(a)(6).

The second incident alleged by the Complainant as evidence of the bad faith of the Activity occurred when Jack Carlton, Chief Management Representative, at the first negotiation session on November 19, 1975, suggested that negotiations be postponed until after the first of the year. The reason for this suggestion, as understood, and cited by the union in its pre-complaint charge letter, was that there were rumors that the Civilian Personnel Office might be moved from Forbes to McConnell Air Force Base. The union, according to the Management's minutes of the November 19 meeting, had heard these rumors but

stated that they did not wish to delay negotiations. There is no evidence in the case file to indicate that the Activity insisted on delaying or further postponing negotiations. The Motion to Dismiss states that Management "did not insist on its request but continued the dialogue into other areas. Later, after Complainant had walked out of the initial session, Respondent repeatedly offered to resume negotiations." Complainant does not deny these facts as they are set forth by Management, nor even address them in its reply to the Motion to Dismiss. Evidence in the file reveals that rather than cause any delays, Management, on at least two different occasions (November 24 and December 11) offered to resume the negotiations. From the above, it is clear that there has been no evidence presented to support a finding that the Activity engaged in any conduct warranting a finding of bad faith bargaining and, therefore, I find no merit to this aspect of the complaint.

The last statement cited in the Complaint as evidence of bad faith concerned Carlton's statement that he (Carlton) was going to negotiate Management's version of the contract. In view of the fact that the union apparently walked out of the negotiations subsequent to this statement, and no further negotiations took place through no fault of the Management, I cannot conclude that this initial declaration, standing by itself, can be labeled an unfair labor practice. The file contains no indication that the Activity refused to consider any proposal set forth by the union, or refused, at any time, to bargain with the union. From the evidence submitted, it is clear that the Activity has at no time insisted on negotiating its version of a contract, as alleged in the Complaint and I find no merit to this allegation.

In view of all of the above, I am dismissing the complaint in its entirety.

Pursuant to Section 203.8 of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, no later than close of business August 10, 1976.

Sincerely,

Cullen P. Keough
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
12-23-76

828

Mr. B.E. Martin
Regional Director
Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

Re: Department of Interior
U.S. Bureau of Reclamation
Mid-Pacific Regional Office
Case No. 70-5111(GA)

Dear Mr. Martin:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Application for Decision on Grievability or Arbitrability in the instant case.

In your request for review, you contend that the Regional Administrator erred in finding grievable and arbitrable questions related to the impact on unit employees of management's decision to create a new position description. The Applicant, International Brotherhood of Electrical Workers, Local 1245, AFL-CIO (IBEW), filed a grievance alleging that the establishment of the position of Electronics Technician (GS-11) by the Activity was improper as the duties of such technicians are substantially similar to those employees encompassed by the Applicant's unit (a unit limited to Wage Grade employees).

In reaching his decision, the Regional Administrator found that the matter involved herein is grievable and arbitrable as the Preamble to the parties' agreement sets forth the Applicant's "jurisdiction" and, pursuant to Article V, Section 2, the parties have been unable to reach agreement on the jurisdictional placement of the position. He concluded that negotiations are not barred by the Order with respect to the impact and implementation of a decision which is otherwise non-negotiable under Section 12(b) of the Order and, therefore, the matter herein is grievable and arbitrable under the parties' agreement.

Under all of the circumstances, I find that the instant matter is not one that is subject to the parties' negotiated grievance procedure. Thus, in my view, the Regional Admininstator erred in equating the right to negotiate under the Order with the right to grieve or arbitrate the matter involved herein. There is no basis in the parties' agreement for finding that

a contractual right to grieve exists over the impact of management's decision to create a new position description (i.e., Electronics Technician GS-11). In this regard, it was noted that the agreement does cover grievances, mediation and arbitration with respect to certain procedures. However, nowhere is the specific question of new classifications covered by the agreement. Nor does it speak of grieving over the impact of decisions of management in this regard. In my opinion, absent a provision in the parties' agreement, any right the Applicant may have to negotiate over impact arises from Executive Order 11491, as amended, and can be raised with the Assistant Secretary under the prescribed unfair labor practice procedures. See, in this connection, Section 205.13 of the Assistant Secretary's Regulations which provides, in pertinent part, that an applicant who has received a final decision on his application in the form of " . . . a decision by the Assistant Secretary . . . finding that the matter covered by the application is not subject to the grievance procedure in an existing agreement . . . may file a complaint alleging an unfair labor practice under Section 19 of the Order which is based on the same factual situation which gave rise to the grievance covered by the application."

Based on the foregoing, I find that the subject grievance is not grievable or arbitrable under the parties' negotiated agreement. Accordingly, your request for review, seeking reversal of the Assistant Regional Director's Report and Findings on Application for Decision on Grievability or Arbitrability, is granted, and the Application herein is hereby dismissed.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

U. S. BUREAU OF RECLAMATION MID PACIFIC REGION -ACTIVITY	)	
-AND-	)	CASE NO. 70-5111
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1245 -APPLICANT	)	

REPORT AND FINDINGS

ON

APPLICATION FOR DECISION ON GRIEVABILITY OR ARBITRABILITY

Upon application for decision on grievability or arbitrability duly filed under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of the matter has been conducted by the Area Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, the undersigned finds and concludes as follows:

On January 9, 1976, the International Brotherhood of Electrical Workers, Local 1245, herein called the Applicant, filed an application for a decision on the grievability and arbitrability of a grievance filed under the negotiated grievance and arbitration procedure of an existing negotiated agreement, concerning an alleged unilateral assignment of bargaining unit work to non-bargaining unit employees by the Bureau of Reclamation, Mid-Pacific Region, herein called the Activity.

The Applicant is the exclusive representative of the hourly employees of the Activity, who are not subject to Part 511, Title 5 of the U. S. Code and who are employed within the administrative jurisdiction of the Activity north of Santa Barbara County and the Tehachapi Mountains except for those employees on the Klamath and Lahontan Basin Projects. The Applicant and Activity are parties to a negotiated agreement which consists of a basic agreement and three supplementary agreements last signed on February 11, 1975, which were in effect at all times material herein.

On June 6, 1975, a new position description for an electronics technician GS-11 was officially issued. On September 30, 1975, the Applicant filed a grievance on the matter in accordance with the negotiated grievance procedure, contending that the work encompassed by the new position description " . . . falls properly within the Communication and Instrument Mechanic definition . . .," a unit position.

On the same date, the Applicant informed the Regional Director of the Activity that a work jurisdiction dispute existed pursuant to Article V, Section 2 of the negotiated agreement, which states that:

> It is agreed that the trade jurisdictional boundaries that are now established by custom, practice and tradition, or jurisdictional awards or decisions, will remain in force. Jurisdictional boundary disputes will be settled by Bureau and Union jointly. Whenever new pieces of work develop, these shall be allotted according to existing jurisdictional awards, custom, practice or tradition. Nothing here shall restrict Bureau from assigning new work, not covered by jurisdictional awards or decision, to employees who, in Bureau's judgment, are best qualified to perform the work until an agreement can be reached by the Union and Bureau. The Bureau agrees to alter its decision thereafter to conform with such agreement as soon as qualified replacement can be made.
>
> It is also agreed that the Union shall notify the Regional Director of existing jurisdictional agreements or disagreements which affect the assignment of work on the project and of those agreements or awards which are reached as a result of settlement of disputes.

The Activity on October 10, 1975, replied and asserted that Article I, Section 4 of the negotiated agreement empowered management " . . . to determine the kinds of personnel by which operations are to be conducted . . .," and rejected the Applicant's demand that the work in question be assigned to unit employees. Article I, Section 4 of the negotiated agreement states that:

> It is further recognized that management officials retain the right and obligation, in accordance with applicable laws and regulations, to direct employees of the bureau or office involved; hire, promote, demote, transfer, assign, and retain employees in positions within the bureau or office, and to suspend or discharge employees for proper cause; relieve employees from duties because of lack of work or for other legitimate reasons; maintain the efficiency of the government operations entrusted to them, and determine the methods, means, and numbers and kinds of personnel by which such operations are to be conducted.

On October 21, 1975, the Applicant requested a meeting with the Activity for the purpose of selecting an arbitrator which the Activity rejected on November 28, 1975, citing the above noted Article I, Section 4 of the negotiated agreement and Sections 11(b) and 12(b) of Executive Order 11491, as amended.[1/] Following this rejection, the subject Application was filed.

1/ Section 11(b) of the Order states in pertinent part that: ". . . the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change."

The Applicant contends that the unilateral assignment of bargaining unit work to non-bargaining unit employees by the Activity is arbitrable under Sections 11(b) and 13(b) [2/] of the Order, as well as under Article VI, Sections 1 and 2 of the negotiated agreement (Article VI is entitled "Grievances") which state, in pertinent part:

> The purpose of this Article is to establish a mutually satisfactory method for the settlement of employee grievances and Union protests over management actions in the interpretation and/or application of the General Labor Agreement or regulations, policies, and laws affecting the employees.
>
> Matters appropriate for consideration under this procedure include:
>
> a. Pay Administration
>
> . . .
>
> e. Implementation of personnel policies and labor-management agreements.
>
> Matters excluded from consideration under this procedure because of prescribed regulatory appeal procedures are:
>
> a. Position classification appeals.
>
> . . .

Alternatively, the Applicant argues that the alleged reassignment of the work in question, even if non-negotiable in itself, is negotiable with respect to the impact of such assignment of work on unit employees inasmuch as this assignment resulted from technological change. The Applicant asserts that the alleged failure of the Activity to consult with the Applicant on the matter prior to the assignment of the work is therefore arbitrable.

Footnote 1/ continued:

Section 12(b) of the Order, which is copied in Article I, Section 4 of the negotiated agreement, states in regards to negotiated agreements between agencies and labor organizations: " . . . management officials of the agency retain the right, in accordance with applicable laws and regulations - (1) to direct employees of the agency; (2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees; (3) to relieve employees from duties because of lack of work or for other legitimate reasons; (4) to maintain the efficiency of the Government operations entrusted to them; (5) to determine the method means, and personnel by which such operations are to be conducted; and (6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; . . ."

2/ The applicant refers to Section 13(b) of the Order in its form prior to the recent amendments to the Order. Before these amendments, Section 13(b) read: "A negotiated procedure may provide for the arbitration of grievances over the interpretation or application of the agreement, but not over any other matters. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Council, under regulations prescribed by the Council."

In this regard, the Applicant contends that Article V, Section 2 of the agreement, which deals with trade jurisdictional boundaries, provides a mechanism by which, at the very least, appropriate arrangments may be established for employees adversely affected by the impact of work realignment and technological change. The Applicant proposes that an arbitrator could decide whether or not the work in question was bargaining unit work, as well as whether or not the Activity failed to consult on the matter.

The Activity argues that the assignment of work is an absolute management right under Section 12(b)(5) of the Order. Further, the Activity interprets Section 11(b) of the Order to mean that the parties may elect to negotiate arrangements for employees adversely affected by the impact of realignment of work forces or technological change, and not that the exclusive representative is entitled to arbitrate a dispute concerning the situation.

The Activity, in addition, views the grievance as a position classification appeal and asserts that position classification appeals are expressly excluded from the negotiated grievance and arbitration procedures.

The Activity also raises a number of issues that involve the merits of the matter, including that the Applicant was adequately consulted on the matter and that unit employees have not been adversely affected by the assignment of work in question.

In this latter regard, the Applicant contends that questions concerning whether there were consultations occurring prior to the new work assignment and whether consideration was given to the impact of this decision on unit employees should only be decided by an arbitrator.

The facts of this case are not in dispute. There are two primary issues to be resolved. The first issue is whether or not the work assignment itself is a right reserved for management under Section 12(b) of the Order, and thus not subject to the negotiated grievance and arbitration procedures. The second issue is whether or not the impact of the work assignment is grievable and arbitrable under Sections 11(b) and 13 of the Order, and under Article V, Section 2, and Article VI, Sections 1 and 2 of the negotiated agreement.

The Federal Labor Relations Council ruled in its decision in Tidewater Virginia Federal Employees Metal Trades Council, FLRC No. 71A-56, that a union proposal which would place a limitation on the right of the activity to assign work was incompatible with Section 12(b)(5) of the Order, and, therefore, non-negotiable. The Council also made it clear that contract language and bargaining history can not alter the express language and intent of the Order. Thus, it is concluded that with respect to the first issue, the decision to assign the work at issue is a right reserved to management under Section 12(b)(5) of the Executive Order, and therefore, is not grievable or arbitrable.

However, the Council was careful to note in Tidewater Virginia Federal Employees Metal Trades Council, supra, that this decision was not intended to nullify its decision in Veterans Administration Research Hospital, Chicago, Illinois, FLRC No. 71A-31, wherein the Council ruled that the reservation of the Activity's authority with regard to Section 12(b)(2) of the Order did not " . . . bar negotiations of procedures, to the extent consonant with law and regulations, which management will observe in reaching the decision or taking the action involved, provided that such procedures do not have the effect of negating the authority reserved." Thus, negotiations are not barred by the Order with

respect to the impact and implementation of a decision which is otherwise non-negotiable under Section 12(b) of the Order.

The Applicant asserts that agency actions which have an adverse impact on employees due to realignment of work forces and technological change are made arbitrable by the last sentence of Section 11(b) of the Order.

Conversely, the Activity contends that 11(b) of the Order means that the parties may elect to negotiate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

Disposition of the instant Application, the undersigned concludes, can be made on the basis of the analysis set forth below.

Initially, it is noted that the representation jurisdiction of the Applicant at the facility involved herein is set forth in the unit description as found in the Preamble of the basic agreement.

There is a dispute between the parties as to whether these jursidictional boundaries of Applicant have been violated by the issuance of a new position description for an electronics technician GS-11 and whether such action has adversely affected unit employees.

Article V, Section 2 of the negotiated agreement provides, in part, that the Activity may fill a new position not covered by a jurisdictional award or decision with the best qualified candidates until an agreement between the parties can be reached as to the jurisdictional placement of the position. However, the parties have been unable to reach agreement on the jurisdictional placement of the position.

Moreover, Applicant has protested the Activity's action in the interpretation and/or application of the negotiated agreement (i.e.: the Preamble setting forth the unit description and Article V, Section 2 setting forth the procedures to be followed in a jurisdictional dispute) and has grieved under Article VI, Section 1 and 2 of the agreement.

There is no evidence or contention that the matters set forth in Article VI, Section 2 as being appropriate or inappropriate for consideration under that Article are exclusive rather than merely illustrative.

It is concluded, accordingly, that the issue as to the impact on unit employees of the issuance of the position description for an electronics technician GS-11 arises under the negotiated agreement and is subject to resolution through the negotiated grievance/arbitration procedures.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other party. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on June 28, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review, is not filed, the parties shall notify the Regional Administrator for Labor-Management Services Administration, U. S. Department of Labor, in writing, within 20 days from the date of this decision as to what steps have been taken to comply herewith.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Gordon M. Byrholdt

GORDON M. BYRHOLDT
Regional Administrator
San Francisco Region
Room 9061 Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: June 11, 1976

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

12-27-76

Mr. Stephen E. Young
Vice President, National
Border Patrol Council
American Federation of
Government Employees, AFL-CIO
6600 N.I.H. 35 Lot 22
Laredo, Texas 78041

Re: Department of Justice
Immigration and Naturalization
Service, Southwest Regional
Office
Case No. 63-6302(CA)

Dear Mr. Young:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the complaint has not been established.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

911 WALNUT STREET – ROOM 2200

816-374-5131 Office of Kansas City, Missouri 64106
The Regional Administrator

August 11, 1976

In reply refer to: 63-6302(CA)
Justice/Immigration and
Naturalization Service, SW
Regional Office/National Border
Patrol Council of the AFGE

Mr. Stephen E. Young
Vice President
National Border Patrol Council
6600 North IH 35, Lot 22
Laredo, Texas 78040

Dear Mr. Young:

The above-captioned case alleging violations of Section 19 (a) (1) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant. Although you were afforded additional opportunity to submit evidence in support of the allegations, none has been received.

In this regard, the investigation into this matter disclosed that management was not in violation of Sections 19 (a) (1) and (6) of the Order in laterally transferring Gerald Shaffer from Anti-Smuggling Officer to Intelligence Officer since a history of past practice of such transfers has been established. There is no evidence that the union has filed any charges on such transfers prior to this complaint and you have offered no evidence to refute management's supported evidence of past practice of utilizing the management-need provision of the negotiated Promotion and Reassignment Plan to effect the lateral transfer of employees to noncompetitive positions. Furthermore, as cited in decisions of the Assistant Secretary no 528/1 and no. 624/2 "... alleged violations of a negotiated

1/ General Services Administration, Region 5, Public Buildings Service, Chicago Field Offices and Local 739, National Federation of Federal Employees

2/ Department of the Army, Watervliet Arsenal, Watervliet, New York and American Federation of Government Employees, AFL-CIO, Local Union 2352

agreement which concern differing and arguable interpretations of such agreement, as distinguished from alleged actions which would constitute clear, unilateral breaches of the agreement, are not deemed to be violative of the Order."

In those circumstances, it has been found that your remedy for such matters lies within the grievance machinery of the negotiated agreement, rather than through the unfair labor practice procedures. Accordingly, in my view, the issue involves essentially a differing interpretation of the negotiated agreement, and management's conduct did not constitute a clear, unilateral breach of that agreement.

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business August 26, 1976.

Sincerely,

Cullen P. Keough

CULLEN P. KEOUGH
Regional Administrator for
Labor-Management Services Administration

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

1-3-77

Mr. Albért B. Fife
1834 S. Broadmoor Ave.
West Covina, California

830

Re: Federal Employees Metal
Trades Council
Long Beach, Calif.
Case No. 72-6430(CO)

Dear Mr. Fife:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on December 6, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary no later than the close of business on December 16, 1976. Your request for review postmarked on December 17, 1976, was received by the Assistant Secretary subsequent to that date.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

December 21, 1976

Mr. Albert Fife
1834 S. Broadmoor
West Covina, California 91790

Re: FEMTC, Long Beach and
Albert Fife
Case No. 72-6430(CO)

Dear Mr. Fife:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Concerning the allegation of 19(b)(1), the evidence presented does not support a finding that Respondent Union failed to fairly and adequately represent you in your grievance. Thus, it is noted that Respondent Union afforded you representation at each stage of the grievance procedure, including an arbitration hearing. Further, it is clear that at no time prior to February, 1976, did you raise the issue of regaining the one hour of annual leave, and that when you did raise it, Respondent Union advised that it would be an untimely and unsupportable grievance.

In this regard, no evidence was presented that the conduct of the Respondent Union toward you was arbitrary, discriminatory, or in bad faith.

Concerning your allegations of 19(b)(2) and (6), no evidence was presented that Respondent Union attempted to induce agency management to coerce you in the exercise of your rights under the Order or that Respondent Union refused to negotiate with agency management as required by the Order. I am therefore dismissing the complaint in its entirety.

Pursuant to Section 203.6(d) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Activity. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based, and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on December 16, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

1-3-77 831

Mr. Lem R. Bridges
Regional Administrator, LMSA
U.S. Department of Labor
1371 Peachtree St., N.E. - Rm. 300
Atlanta, Georgia 30309

Re: U.S. Customs Service
Region IV
Miami, Florida
Case No. 42-3380(CA)

Dear Mr. Bridges:

The unfair labor parctice complaint in the instant case, filed by the National Treasury Employees Union (NTEU), alleges that the Respondent Activity failed to consult and confer concerning the institution of a new passenger inspection procedure on incoming cruise ships in violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In my view, the complaint raises several questions which warrant further consideration and investigation before an appropriate disposition can be made. Thus, it appears that meetings were held between the Respondent Activity and the NTEU prior to the effectuation of the new procedure. It is unclear, however, when these meetings were held, who was present, and the extent to which the new procedure was discussed. Similarly, if the NTEU was given notification of the impending change, it is uncertain as to whether or not the NTEU was afforded the opportunity to request bargaining over the impact and/or implementation of such change. Further, it is unclear as to how employees were adversely affected by the change in procedure.

Under these circumstances, I am hereby remanding the subject case to you for further consideration and investigation of the matters noted above and for appropriate action thereafter.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

August 25, 1976 ATLANTA, GEORGIA 30309

Mr. Vincent L. Connery
National President
National Treasury Employees Union
1730 K Street, N.W. - Suite 1101
Washington, D. C. 20006

Re: Region IV, U. S. Customs Service
Miami, Florida -- Case No. 42-3380(CA)

Dear Mr. Connery:

The above captioned case alleging violation of Section 19(a) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Investigation discloses that sometime in November, 1975, a new procedure was implemented at Port Everglades, Florida, whereby customs inspection teams began going aboard cruise ships to perform customs procedures including the questioning of passengers concerning purchases and calculation of duty. During these inspection procedures the inspectors determine if further or "secondary" examinations will be conducted after the passengers leave ship. This new procedure differs from the old system in that previously passengers were released ashore to claim baggage and present their declarations to an inspector in the customs area.

You allege that the procedure was instituted without conferring or consulting with the exclusive representative in violation of Sections 19(a)(1) and (6).

Respondent has raised an issue concerning the right of the National President to raise matters under the contract between Respondent and National Customs Service Association. 1/ The contract in Article II provides as follows:

> 3. The Association agrees that the National Vice President, Region IV of the Association or his designee has full and final authority to act for the Association in all matters which may arise under this agreement.

1/ NTEU is exclusive representative by virtue of Amendment of Certification in Case No. 42-2983(AC) which changed the designation of the exclusive representative from National Customs Service Association.

Respondent argues that inspection procedures at Port Everglades involve matters encompassed in Article II which have not been raised by the National Vice President of Region IV. For this reason the complaint, according to Respondent, should be dismissed as non-actionable. Respondent has not addressed the merits of the complaint.

The language "matters which may arise under this agreement" is clear. The agreement makes no reference to matters arising, under Section 19 or any other portion of the Order. Raising an allegation of violation of Section 19 is not raising a contract matter. Respondent's position that the National President may not file is groundless, and therefore is not a basis for dismissal of the complaint.

With respect to the allegations raised by complainant, it is not alleged nor is there any evidence that the new cruise ship inspection system changed the type of work performed by the inspectors. Nor is there evidence that the inspectors' hours of work were changed, that the system affected the time required to perform their duties or that their working conditions were otherwise affected. At best the evidence indicates that the inspectors under the new system are required to perform at least some of their inspection and examination functions aboard a ship which prior to the change were performed on land or at what was designated as a "customs area." Such evidence does not warrant a conclusion that the new system had such an impact on employees that it affected their working conditions. In the absence of evidence that the working conditions of employees were affected by the implementation of the cruise ship inspection system Respondent was under no obligation to consult with the exclusive representative before adoption of the new procedures. Therefore I find that there is no reasonable basis for the 19(a)(6). Similarly there is no basis for the 19(a)(1) complaint.

I am therefore dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 9, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services Administration

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

832

1-12-77

Mr. Peter Hayes
President, Local 3343
American Federation of Government
Employees, AFL-CIO
287 Genesee Street
Utica, New York 13501

Re: Social Security Administration
Bureau of District Operations
Utica, New York
Case No. 35-4082(GA)

Dear Mr. Hayes:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability in the above-named case.

In agreement with the Acting Regional Administrator, I find that the grievance involved herein is not grievable. Thus, the complained of event herein, i.e., the non-selection of the grievant, took place during the term of the parties' November 30, 1973, negotiated agreement. Similarly, notice of such non-selection occurred during the term of the November 30, 1973, agreement when, on March 12, 1976, the selection action was posted on Activity bulletin boards. Under these circumstances, I find that the terms of the November 30, 1973, agreement are controlling in this matter and that, as found by the Acting Regional Administrator, under such agreement the instant grievance was neither within the scope of the grievance provision nor filed timely under such provision. Moreover, even assuming arguendo that the instant grievance was covered under the terms of the parties' negotiated agreement of March 22, 1976, I find that it was filed untimely under the prescribed 15 day requirement of such agreement.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

NYRO, Bureau of District Operations Social Security Administration New York, New York 10007	Activity	CASE NO. 35-4082(GA)
and		
Local 3343 American Federation of Government Employees, AFL-CIO	Applicant	

REPORT AND FINDINGS ON GRIEVABILITY

Upon an application for decision on grievability duly filed under Sec. 6(a)(5) of EO 11491, as amended, an investigation of the matter has been conducted by the Area Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

On May 28, 1976, an application for Decision on Grievability or Arbitrability, LMSA-63, was received in the Buffalo Area Office from LU 3343, AFGE, AFL-CIO. The application requests a decision as to whether a grievance filed by an employee in the Binghamton District Office on April 12, 1976, was grievable under the terms of the existing agreement.

LU 3343, AFL-CIO, hereinafter referred to as the Union, is the exclusive representative of all employees in an appropriate unit. The Activity and the Union are parties to an agreement which became effective on March 22, 1976, and is of two years duration. The prior agreement had been in effect since November 30, 1973.

The grievant, Ann Ciringione, Claims Representative in the Binghamton District Office, requested that Peter Hayes, President of Social Security Local 3343, Utica, New York, represent her in the grievance, presented April 12, 1976. The grievance concerned her belief that the HEW Region II Promotion Plan had not been properly applied when the Best Qualified List for the Operations Supervisor position, for which she had applied, had been constructed, and that this failure was a violation of Article XXXVI, Section 12, of the Union-Management Agreement in effect March 22, 1976. The Best Qualified List had been prepared by the New York Regional Office on March 10, 1976, and the notice of selection had been made on March 12, 1976.

Article XXXVI, Section 12, of the current agreement effective March 22, 1976 states:

> If an employee in the bargaining unit believes that.... the Merit Promotion Plan was not properly applied by the Employer, he/she may initiate a grievance with his/her immediate supervisor as outlined in Article XXXIV of this Agreement.

Article XXXIV, Grievances, Section 3, of the Agreement, states that:

> Any grievance on which action is not initiated with the immediate supervisor within fifteen workdays after the occurrence of the incident or event from which such grievance arose will not be presented or considered at a later date unless the employee was not aware of being aggrieved within the stated time limit.

Article 30, Grievances, Section 3, of the prior agreement, contains identical language to Article XXXIV, Section 3, of the new agreement, cited above. However, the expired agreement provided only that the appropriate agency grievance procedure be utilized on any matter other than a dispute over the interpretation or application of the provisions of that agreement (Article 30, Section 1 and 2), while the new agreement provided, in Article XXXIV, Grievances, Section 2, that: 1/

> Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Assistant Secretary of Labor for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in this agreement, or is subject to arbitration under this agreement, will by agreement of the parties be submitted to arbitration for decision.
>
> The Employer agrees to obtain an Agency decision on the grievability or arbitrability of a grievance prior to the time limit for the written answer in Step 3 of this procedure. Any rejection of a grievance on the grounds that it is not a matter subject to this grievance procedure, or is not subject to arbitration shall be executed at Step 3 of the grievance procedure. Such rejection shall be furnished to the Union in writing. If the basis of the rejection is that the matter is subject to statutory appeal procedures, the written notice shall state that this is the final rejection of the matter for the purposes of requesting a decision from the Assistant Secretary of Labor.

At Step 1. of the grievance procedure, Katie King, Operations Supervisor of the Binghamton, New York Office responded to P. Hayes by memo, dated April 16,

1/ It is undisputed that the prior Agreement, effective November 30, 1973, was in effect up until the time the current Agreement became effective.

1976, stating that the grievable event preceded the effective date of the agreement, which was not retroactive. King asked for clarification of the exact nature of the alleged grievable matter and the relief sought so doubts about the selection process could be resolved.

Hayes addressed a reply to King, dated April 19, 1976, stating that the fact of Ciringione's nonselection occurred after the effective date of the agreement, March 22, 1976, because official notice of her nonselection had not yet been received, and thereby met the requirements of the current agreement as a grievance. Further, Hayes stated that the grounds for the grievance were that the individual selected was improperly included on the Best Qualified List, and the selection violated the requirements of the Merit Promotion Plan.

At Step 2., King responded by memo to Hayes, dated May 5, 1976, affirming the decision that no violation of the current agreement nor of the past agreement has occurred, as the Best Qualified List, prepared March 10, 1976, and the notice of selection, made March 12, 1976, both occurred before the effective contract date of March 22, 1976.

At Step 3., Hayes appealed King's determination in a letter, dated May 10, 1976, to William Grace, Jr., Acting Regional Representative. Hayes elaborated on the point that the grievant had not known she was being aggrieved during the prescribed time frame and that she was never officially notified of her nonselection. He stated further that since a copy of the Agreement was not available in the Binghamton District Office until the latter part of March 1976, Ciringione had been unaware of her rights until the early part of April. Hayes also requested that a post audit procedure be implemented as provided under Article XXXVI, Section 12 of the current agreement.

On May 18, 1976, Grace responded with a final rejection in a letter to Hayes which recognized Hayes' belief that the matter could be grieved under provisions of the new agreement because an employee has a 15-workday period after being aggrieved to initiate a grievance, and that the new agreement became effective prior to the expiration of the 15-workday period, after Ciringione learned of the selection and believed she was aggrieved, but rejected Hayes' reasoning as suggesting there is provision for retroactivity of the new agreement. It was the Activity's opinion that since the old agreement contained no language covering promotion plan activities relating to actions by promotion committees, nor provision for audit procedures, and since all actions concerning the selection for the Operations Supervisor position for Binghamton were completed prior to the March 22, 1976, effective date of the new agreement that the matter was not grievable under provisions of either the old or new agreement.

The Union's initial position, restated by Hayes in his letter to King, dated April 19, 1976, was that the individual selected for the position of Operations Supervisor was improperly included on the Best Qualified list, constituting pre-selection, and therefore a violation of the requirements of the Merit Promotion Plan. In the Statement of Facts, accompanying LMSA 63, dated May 24, 1976, Hayes stated that the Union felt the grievable event was not the selection of the particular employee to fill the vacancy, but the nonselection of the

grievant. Hayes reiterated these contentions, in a clarification letter, dated June 11, 1976, plus the fact that the grievant had not been aware that she had been aggrieved until the early part of April, 1976, when copies of the new agreement were first distributed in her office.

Management's position, as stated by Paul Arca, Labor Relations Officer, Bureau of Field Operations, Baltimore, Maryland, dated June 23, 1976, was that the grievance, alleging failure of management to follow the Merit Promotion Plan, is not grievable or arbitrable, as the event occurred prior to the effective date of the new negotiated agreement, and is not an item covered under the old agreement in effect at the time of the occurrence, therefore, the agency procedure would have to be followed to process the complaint. Management took the position that the nonselection date would be the same as the selection date of the successful applicant, and that notice of the selection was posted on the bulletin board as soon as the selection was made. In addition, management does not believe that rights can precede an agreement, or that future rights can be applied retroactively.

Based on the evidence submitted by the parties in support of their positions, I conclude that if the grievable event, as stated, was the nonselection of the grievant, she was then aggrieved at the time of her knowledge of her nonselection, on approximately March 12, 1976. Her subsequent awareness of rights under the new agreement, commencing March 22, 1976, which did not exist and were not available to her under the old contract, does not constitute the condition of being aggrieved, as claimed.

Based upon the evidence submitted by the parties, I conclude that the grievance is not grievable pursuant to the terms of either the prior or the current agreement. In this respect, I note that the prior agreement did not contain any provisions which could have been violated based upon the matters being grieved. Moreover, the provisions of the current agreement were not effective until March 22, 1976 and, hence, were not applicable at the time the promotion actions were taken.

Accordingly, I conclude that there were no provisions in effect at the time the alleged events occurred which could have been violated by the Activity. I am, therefore, dismissing the application.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary of Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Acting Regional Administrator as well as the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business October 7, 1976.

Dated: September 21, 1976

Manuel Ilan
Acting Regional Administrator
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
1-13-77

833

Mr. John F. Galuardi
Regional Administrator
GSA, Region III
7th & O Streets, S. W.
Washington, D. C. 20407

Re: General Services Administration
Region III
Washington, D. C.
Case No. 22-6773(AP)

Dear Mr. Galuardi:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's Report and Findings on Grievability and Arbitrability in which he found the instant matter to be arbitrable under the provisions of the parties' negotiated agreement.

The issues presented by the instant Application for Decision on Grievability or Arbitrability are whether the Activity's alleged violation of its procedural requirements in suspending Mr. Ernest L. Whitaker can be found to be arbitrable under the parties' negotiated agreement or whether such matter is covered by a statutory appeal procedure.

Because, in my view, the procedural matters raised by the instant grievance have been raised and are within the jurisdiction of the Federal Employee Appeals Authority, I find, contrary to the Regional Administrator, that such matters cannot be raised under the parties' negotiated grievance/arbitration procedure. Thus, Section 13(a) of Executive Order 11491, as amended, provides, in part, that a grievance procedure "may not cover matters for which a statutory appeal procedure exists." Under these circumstances, disagreement with any aspect of the decision of the Federal Employee Appeals Authority can be raised only under the provisions of the Civil Service Commission's regulations, which provide for an appeal from the decision of the Federal Employee Appeals Authority to the Commission's Appeals Review Board.

Accordingly, the instant request for review is granted and the Application for Decision on Grievability or Arbitrability is hereby dismissed.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

GENERAL SERVICES ADMINISTRATION
REGION III

Activity/Applicant

and

Case No. 22-6773(AP)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 1733

Labor Organization

REPORT AND FINDINGS

ON

GRIEVABILITY AND ARBITRABILITY

Upon an Application for Decision on Grievability and Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

On or about February 3, 1976, Local 1733, on behalf of Ernest Whitaker invoked binding arbitration over alleged violations of the parties'negotiated agreement and of GSA regulations. Specifically, the union sought to arbitrate the matter of Mr. Whitaker's three-day suspension, challenging both the merits of the disciplinary action and the timeliness of its implementation (over a year after the alleged incident supposedly took place). The Activity took the position that it considered the procedural aspects of the matter to be neither grievable nor arbitrable. On March 31, 1976, the instant application was filed by the Activity seeking a determination by the Assistant Secretary as to whether the Agency regulations governing the three-day suspension were subject to the grievance or arbitration procedures of the parties' negotiated agreement (Articles 13 and 14) or to a statutory appeals procedure.

The relevant portions of the contract are Articles 5, 13, 14 and 15 of the parties's negotiated agreement and are quoted hereafter.

ARTICLE V
MANDATORY PROVISIONS UNDER EXECUTIVE ORDER 11491

Section 1. In the administration of all matters covered by the Agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published Agency policies and regulations in existence at the time the Agreement was approved; and by subsequently published Agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level.

Section 2. Management officials of the Agency retain the right, in accordance with applicable laws and regulations--

(1) To direct employees of the Agency;

(2) To hire, promote, transfer, assign and retain employees in positions within the Agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

(3) To relieve employees from duties because of lack of work or for other legitimate reasons;

(4) To maintain the efficiency of the Government operations entrusted to them;

(5) To determine the methods, means, and personnel by which such operations are to be conducted; and,

(6) To take whatever actions may be necessary to carry out the mission of the Agency in situations of emergency actions that whenever such emergency actions have required the setting aside of any terms of the Agreement, that a written report will be submitted to the Regional Administrator giving the reasons for such actions. The Regional Administrator shall furnish the Union the facts supporting the action taken. It is understood that the exercise of such rights shall be subject to appeal and grievance procedures.

ARTICLE XIII
GRIEVANCE PROCEDURE (in part)

Section 1. The purpose of this article is to provide for a mutually acceptable method for the prompt and equitable settlement of grievances and disputes over the interpretation and application of this Agreement. The negotiated procedure shall be the exclusive procedure available to employees in the bargaining unit for matters defined in Section 2 below.

Section 2. A grievance shall be defined as a complaint of dissatisfaction and a request for adjustment of a management decision, or some aspect of the employment relationship or working conditions which is beyond the control of the employee or the Union, but within the control of the Employer. This is limited to disputes over the interpretation and application of this Agreement.

ARTICLE XIV
ARBITRATION (in part)

Section 1. If the Employer and the Union fail to settle any grievance processed under the negotiated grievance procedure, either party may, within thirty (30) days after the issuance of the final decision request that such grievance be submitted to arbitration. In the case of the Union, the request shall be submitted in writing to the Regional Director, PBS. In the case of the Employer, the request shall be submitted in writing to the President of the Local.

Section 2. Within five (5) days following the receipt of a listing of five (5) qualified arbitrators from the Federal Mediation and Conciliation Service, the parties shall meet to select an arbitrator. If agreement cannot be reached on one (1) of the listed arbitrators, the Employer and the Union will each strike one (1) arbitrator name from the list of five (5) and repeat this procedure until one (1) name remains on the list. The remaining person shall be the fully selected arbitrator. If either party refuses to participate in the selection of an arbitrator, the Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case.

ARTICLE V
DISCIPLINARY ACTIONS

Section 1. When disciplinary action is proposed or taken against an eligible employee of the unit, the Employer will supply the employee with an extra copy of all written notifications so that at his option he may give one copy to a Union representative. Any disciplinary action must be for just cause.

Section 2. In all such cases as set forth in Section 1, the employee may be represented by the Union at all meetings between the employee and designated management representative.

Also relevant is OAD P. 5410.1, CHCE 20, Section 110 of the GSA regulations, quoted hereafter.

Section 3. PROCEDURE FOR TAKING DISCIPLINARY ACTION

110. Timing of the action. When circumstances call for disciplinary action, it should be initiated at once. The time limits given below represent maximums; in most instances the action should be accomplished in lesser periods.

a. If the penalty action is a warning or reprimand, the letter to the employee should be issued within 2 weeks after discovery of the offense.

b. If the penalty action recommended is an adverse personnel action, i.e., suspension, demotion or removal, the letter of charges should normally be issued within 30 calendar days after discovery of the offense.

c. In instances involving investigation by the Investigations Division, Office of Investigations (OAD), these same time limits dating from receipt of the investigation report should be applied.

d. When the time limits specified in a, b, and c above are not met, the record of the case should include a statement explaining the reasons therefor.

The following sections of Title 5 of the United States Code refer to suspensions:

Section 7501. Cause; procedure; exception.

(a) An individual in the competitive service may be removed or suspended without pay only for such cause as will promote the efficiency of the service.

Section 7511. Definitions.

For the purpose of this subchapter--

(1) "preference eligible employee" means a permanent or indefinite preference eligible who has completed a probationary or trial period as an employee of an Executive agency or as an individual employed by the government of the District of Columbia, but does not include an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of the Senate, except an employee whose appointment is made under Section 3311 of Title 39; and,

(2) "adverse action" means a removal, suspension for more than 30 days, furlough without pay, or reduction in rank or pay.

CHAPTER 77.--APPEALS

Sec. 7701. Appeals of preference eligibles.

Sec. 7701. A preference eligible employee as defined in Section 7511 of this title is entitled to appeal to the Civil Service Commission from an adverse decision under Section 7512 of this title of an administrative authority so acting. The employee shall submit the appeal in writing within a reasonable time after receipt of notice of the adverse decision, and is entitled to appear personally or through a representative under regulations prescribed by the Commission. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority and shall send copies of the findings and recommendations to the appellant or his representative. The administrative authority shall take the corrective action that the Commission finally recommends. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 530)

The investigation established that in December 1975, the Federal Protective Service Decision of GSA notified FPSD employee Ernest Whitaker of the Activity's intention to suspend him from duty for three (3) days without pay. This proposed disciplinary action stemmed from an incident which occurred in January 1975 and involved Whitaker's possession of a firearm while off duty. The suspension was implemented in early February 1976.

Thereafter, the Union invoked binding arbitration on all aspects of the disciplinary action, in accordance with Article XIV of the Agreement. Apparently, following the Activity's advice, Whitaker also appealed his suspension to the Federal Employee Appeals Authority (FEAA)

The Activity's position is that elements of the grievance alleging violation of Agency regulations due to procedural error are appealable solely through the statutory appeal procedure of the Federal Employee Appeals Authority.

The Union disputes this, contending that agency regulations are subject to the grievance and arbitration procedures outlined in Article XIII and XIV of the Agreement, and are not subject to any statutory appeals procedure within the meaning of Section 13(a) of the Executive Order. It argues that Article V, Section 1 of the Agreement controls "all contractual provisions and related applicable regulations of the Labor-Management Agreement," and that any violation thereof is a proper subject for arbitration. Further, the Union contends that Section 13(a) of the Order recognizes the negotiated grievance procedure as the exclusive avenue

for resolving grievances of this kind. Finally, the Union argues that the Agency recently allowed a grievance involving a similar procedural matter to go to arbitration without protest. I find the three-day suspension of Mr. Ernest L. Whitaker to be a proper subject for arbitration. Granted, the Civil Service Commission does consider an appeal on the procedures used in effecting a suspension of 30 days or less to be statutory appeal. 1/ The only agency regulations that are covered by that appeal are those that were applicable from the time the notice was issued to the employee until the effective date of the suspension. Accordingly, any failure of an agency to take action promptly, as required by its own regulations, or the failure of an agency to "thoroughly investigate" an incident as required by agency regulations, is not appealable to the FEAA. Since a "statutory appeals procedure," within the meaning of Section 13 of the Order,does not exist for questions of timeliness and in light of past practice of the parties, I find the matter to be grievable and arbitrable.

Pursuant to Section 205.6(b) of the Assistant Secretary's Regulations, an aggrieved party may obtain a review of this finding and contemplated action by filing a request for review with the Assistant Secretary with a copy served on me and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Office of Federal Labor Management Relations, 200 Constitution Avenue, N.W.,Washington, D.C. 20210. A copy of this request for review must be served on the undersigned Acting Regional Administrator, as well as the other parties. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business August 25, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review or a request for an extension of time in which to file a request for review is not filed, the parties shall notify the Acting Regional Administrator for Labor-Management Services, U.S. Department of Labor, in writing within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Acting Regional Administrator's address is 14120 Gateway Building, 3535 Market Street, Philadelphia, Pa. 19104.

DATED: August 11, 1976

Kenneth L. Evans

Kenneth L. Evans,Regional Administrator
for Labor-Management Services

Philadelphia Region

1/ See United States Civil Service Commission Circular #1019 dated September 18,1939 and Commission Letter #59-34, dated September 18, 1959.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

834

January 27, 1977

Al Halx, President
Lodge No. 81
International Association of
Machinists and Aerospace Workers
105 Sixteenth Avenue
East Moline, Illinois 61244

Re: Department of the Army
Rock Island Arsenal
Rock Island, Illinois
Case No. 50-13188(GA)

Dear Mr. Halx:

This in connection with your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Acting Regional Administrator issued his report and findings in the instant case on December 23, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on January 7, 1977. Your request for review, postmarked on January 7,1977, was received by the Assistant Secretary subsequent to that date.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE ARMY,
ROCK ISLAND ARSENAL,
ROCK ISLAND, ILLINOIS,

Applicant

and

Case No. 50-13188(GA)

LODGE NO. 81, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Respondent

REPORT AND FINDINGS
ON
ARBITRABILITY

On October 7, 1976, Rock Island Arsenal, Rock Island, Illinois, filed an Application for Decision on Grievability or Arbitrability with the Chicago Area Administrator concerning a unit of its employees which is exclusively represented by Lodge No. 81, International Association of Machinists and Aerospace Workers (IAMAW). 1/ The collective bargaining agreement between the parties is the "Negotiated Agreement Between Rock Island Arsenal, Rock Island, Illinois, And International Association of Machinists And Aerospace Workers Arsenal Lodge No. 81," which remains in force for three (3) years from its effective date of April 20, 1976.

1/ Recognition was granted on March 25, 1964, under Executive Order 10988 to Lodge No. 81, IAMAW, as the exclusive representative for a unit of employees described as including "all non-supervisory Wage Grade employees employed at Rock Island Arsenal, and excluding "all Wage Grade, non-supervisory employees in the unit consisting of Trainee and Journeyman Toolmakers, Tool and Die Hardeners and Die Sinkers; all Wage Grade non-supervisory employees assigned to the unit consisting of the Central Heating Water Filtration and Air Compressor Plants of the Facilities Engineering Office; (and employees specifically excluded by provisions of Executive Order 11491, as amended, Section 10(b))." The parenthetical portion of the unit description was added after recognition was granted to achieve conformity with the Executive Order. In an Amendment of Recognition dated December 31, 1974 the Chicago Area Administrator (in Case No. 50-11135(AC)) ordered that "Rock Island Arsenal and the United States Army Communications Command Agency-Rock Island" be substituted for "Rock Island Arsenal" as the designation of the activity for the unit described above.

The issue before me in this matter is whether or not the Applicant's decision to shut down a portion of the Rock Island Arsenal during the period of December 24, 1976, to January 2, 1977, is arbitrable under the terms of the negotiated agreement.

Investigation reveals that after the Respondent requested a meeting on the above issue and the subsidiary issue of requiring the use of four (4) days annual leave by the affected employees in accordance with Article XXIII, a. Step 1 ("Union Dispute Procedure"), of the negotiated agreement, the parties met on August 9, 1976, but were unable to resolve their differences. In accordance with Article XXIII, b. Step 2, of the negotiated agreement, the Respondent submitted its position with respect to the above issues on August 16, 1976, and the Applicant submitted its position on August 19, 1976. In this statement the Applicant maintained that the decision to shut down a portion of the arsenal and require the usage of annual leave by affected employees was not arbitrable under the provisions of the negotiated agreement. A meeting between the parties was held on September 1, 1976, but the parties were still unable to resolve their differences. 2/ On September 9, 1976, the Respondent requested arbitration on only the "4 day shut down in December 1976" and so I shall limit my consideration to this issue.

It is appropriate to consider the sections of the negotiated agreement which the Applicant and the Respondent have determined to be pertinent. Article II ("Matters Appropriate For Meeting And Conferring") is a statement of general purpose regarding the obligation of activity management to meet and confer with the union on policies and programs affecting working conditions. Article III ("Rights Of The Employer") is basically a restatement of Section 12(b) of Executive Order 11491, as amended, which defines management's non-negotiable rights. Article XXII ("Employee Grievance Procedure") provides for " . . . the mutually satisfactory settlement of employee grievances involving the interpretation or application of this agreement," and it contains sections on policy, coverage, and procedure. Article XXIII provides that, "the following procedure will be followed in resolving disputes (differences of opinions concerning the interpretation and application of this Agreement) where no individual

2/ Article XXIII, b. Step 2 states (in part) that, "The parties will exchange their respective positions in writing . . . /within/ ten (10) working days from the date of the Step 1 meeting. Within five (5) working days from the date the written proposals are exchanged, the . . . /parties/ will meet to attempt to arrive at a satisfactory solution." In its August 19, 1976, response the Applicant refers to an oral agreement between the parties that the written position statement would be submitted after rather than prior to Step 2. Therefore, the September 1, 1976, meeting would appear to have been an additional attempt to resolve the dispute outside of the Article XXIII requirements.

employee grievance is involved." This article provides for the accelerated handling of union grievances which are of a general or institutional nature and do not involve a specific supervisor or employee. 3/ Article XXVI ("Existing Benefits and Understandings") is a statement of the obligation of activity management to meet and confer with the union before making changes in matters affecting working conditions.

Where, as here, the relevant Agreement dispute settlement procedure is limited to differences of opinions concerning the interpretation and application of the Agreement, it becomes necessary to closely examine all provisions in the negotiated Agreement to determine any reference to or arguable coverage of the matter requested by the Respondent for arbitration which has been stated specifically as "this is a request for arbitration on the 4-day shutdown in Dec. 76." A careful review of the Agreement reveals no such substantive provisions. The only Article at all arguably relevant to the issue of the shutdown is Article II which provides Respondent with the right to meet and confer with Applicant on certain policies and programs. However, the decision on the 4-day shutdown is a right reserved to management within the provisions of Section 12(b) of Executive Order 11491, as amended, and no obligation exists to negotiate concerning the decision itself.

Accordingly, having carefully considered the Application and all materials submitted by the parties in interest, I find that the matter of the 4-day shutdown in December of 1976 is not subject to arbitration under the existing Agreement between the Applicant and Respondent.

Pursuant to Section 205.6(b) and 202.6(d) of the Regulations of the Assistant Secretary, any party aggrieved by this action may obtain a review of this decision by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding, and a statement of service filed with the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the Assistant Secretary of Labor for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, LMSA, United States Department of Labor, 200 Constitution Avenue, N. W.,

3/ Article XXII and Article XXIII are both concerned with the "interpretation or application of the agreement" and would appear to be two (2) parts of the same grievance procedure rather than being separate and unrelated articles. The Article XXII sections on policy (a general statement concerning the rights of employees under the grievance procedure) and coverage (listing ten (10) issues, mainly personnel actions, which are excluded from the grievance procedure) are an extended definition of the application of the grievance procedure in a particular (employee related) context and their absence in Article XXIII should not be seen as either circumscribing or extending that article.

Washington, D. C. 20216, not later than the close of business January 7, 1977.

Dated at Chicago, Illinois, this 23rd day of December 1976.

LeRoy L. Bradwish
Acting Regional Administrator
United States Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

1-27-77 835

Mr. Michael Sussman
Office of the Chief Counsel
General Legal Services Division
Branch No. 1 Room 4568
Internal Revenue Service
1111 Constitution Avenue, N. W.
Washington, D. C. 20224

Re: Internal Revenue Service
Fargo District Office
Fargo, North Dakota
Case No. 60-4380(GA)

Dear Mr. Sussman:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Arbitrability in the subject case.

Contrary to the Regional Administrator, I find that the instant grievance is not arbitrable under the parties' negotiated agreement.

It is alleged that agency management failed to comply fully with certain provisions of the parties' negotiated agreement when it failed to select the grievant for promotion. It is undisputed that the parties' agreement provides for first consideration to be given to bargaining unit employees if they are equally qualified compared to nonbargaining unit employees, and that the agreement outlines certain factors to be considered by management officials in ranking and selecting candidates for promotion.

On behalf of the Internal Revenue Service, you argue that the National Treasury Employees Union (NTEU) is attempting to usurp management's right under Section 12(b)(2) of the Executive Order to select among candidates for promotion.

While I agree that the principle of Veterans Administration Research Hospital, Chicago, Illinois, FLRC No. 71A-31, is set forth properly by the Regional Administrator, I do not agree with his application of that case to the facts in the instant matter. Thus, the NTEU alleges that agency management has failed to properly apply and/or consider the criteria which it is bound by the agreement to consider in reviewing candidates for promotion. In this regard, it is apparent that it is, in effect, arguing about the weight which

the ranking and/or selecting officials gave to certain of the factors to be considered. It is not shown that management failed to consider any of such factors.

Under these circumstances, I view the gravamen of the NTEU's grievance as an attempt to substitute its own judgment for that of the ranking and/or selecting officials, a right reserved to management under Section 12(b)(2) of the Order.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Arbitrability, is granted, and the instant Application for Decision on Grievability or Arbitrability is hereby dismissed.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT SERVICES
KANSAS CITY REGION

DEPARTMENT OF TREASURY INTERNAL REVENUE SERVICE FARGO DISTRICT OFFICE FARGO, NORTH DAKOTA 1/ Activity and NATIONAL TREASURY EMPLOYEES UNION and CHAPTER 002, NATIONAL TREASURY EMPLOYEES UNION 2/ Applicants	Case No. 60-4380(GA)

REPORT AND FINDINGS
ON
ARBITRABILITY

Upon an Application for Decision on Arbitrability duly filed under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of the matter has been conducted by the Kansas City Area Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

The Application was filed in the office of the Kansas City Area Administrator on August 13, 1975. The Application arises from a grievance filed on February 19, 1975 by Ms. O. Lucille Lageson, an employee of the Activity, in accordance with Article 35 of the parties' collective bargaining agreement, against the Fargo District Office of IRS. The negotiated agreement between the parties is the Multi-District Agreement Between Internal Revenue Service and National Treasury Employees Union, which remains in force and effect for two years from its effective date of August 3, 1974. The Application cites the following sections of the collective bargaining agreement as being pertinent to the question of Arbitrability:

Article 7. PROMOTIONS/OTHER COMPETITIVE ACTIONS
Section 1. The purpose of this Article is to ensure that all competitive promotions to Bargaining Unit positions and certain other placement actions as set forth in Section 2 of this Article

1/ Hereinafter referred to as the Activity or IRS.

2/ Hereinafter referred to as the Union or NTEU.

are made on a merit basis by means of systematic and equitable procedures so that employees are given an opportunity to develop and advance to their full potential. To that end, the action referred to above will be processed in accordance with this Article and the Employer's published promotion plans.

Section 2.B. Exceptions to the coverage of this Article will be as follows: . . .
6. Filling vacancies at the journeyman level or below provided that a bargaining unit employee will receive simultaneous consideration with all other applicants and will be selected for such position if they are as well qualified for the vacant position as the other applicant.

Section 2.C. When filling vacancies above the journeyman level employees who are on a properly constituted best qualified list will be selected to fill such vacancies in preference to all others, if such employees are as well qualified as the others. It is understood that non-employee candidates must, in order to be considered, be on the Best Qualified list.

Section 4.A. Each employee who has applied for and meets the basic eligibility requirements and any selective placement factors previously announced for a vacancy shall receive a fair and objective promotion appraisal from his immediate supervisor who is immediately responsible for the employee's work, and who assigns, reviews and evaluates the employee's work. If the immediate supervisor is an acting supervisor, the provisions of Article 9, Section 1(a) of this Agreement will apply.

Section 7.A. When a selecting official is considering a group of best qualified candidates and narrows his choice to two (2) or more candidates on the best qualified list he determines to be equally well qualified, he will select the candidate with the greatest length of IRS service.

Section 15.D. In the absence of adjustment satisfactory to the aggrieved employee of any merit promotion action involving an employee of the Unit which is determined to have been in violation of the provisions of the published promotion plan or this agreement, corrective action will be taken as follows:
1. If the employee was among the best qualified candidates and it can reasonably be determined that he would have been selected, a promotion certificate which contains his name alone will be submitted to a selecting official for the next available vacancy.

The grievance giving rise to the instant allegation stemmed from the Activity's failure to select Lucille Lageson for the position of Administrative Clerk, GS-301-4/5, Office Services Staff, Administrative Division, Fargo-District Office, which position Ms. Lageson had bid on in January 1975, and for which she had been placed on the list of best qualified candidates. However, Ms. Lageson was not selected; rather, an employee of the Armed Forces Examining and Entrance Station was appointed to the position.

Lageson's grievance at Step 1, filed on February 19, 1975, charged that management had failed to comply fully with Article 7, Section 4.H of the Multi-District Agreement in making its selections for the position in question. This section of the Agreement enumerates factors to be considered by a ranking official or panel in judging the potential of candidates for promotion 3/, as well as standards and procedures for scoring of candidates.

The grievant alleged at Step 1 that ". . . the employer failed to interpret correctly" these evaluation factors, failed to consider fully her past experience and training, applied a more stringent test to her promotion appraisal than had been applied to that of the selected candidate, and ". . . consequently did not select the best candidate."

The grievance was amended on March 6, 1975 at (combined) Steps 2 and 3 of the grievance procedure, with apparent agreement of the Activity, to include Sections 1, 2.B.6, and 2.C of Article 7 as sections of the Agreement alleged to have been violated. With respect to Section 1 of Article 7, the grievant urged that ". . . the selecting official's decision was not based upon the merits as it is obvious the wrong candidate was selected." With regard to Sections 2.B.6 and 2.C of Article 7, the grievant asserted that the meaning of the Agreement is clearly that, where an employee can demonstrate that he or she is as well qualified for a position as a non-employee or non-unit employee, he or she must be selected for the position.

Having been denied at Steps 2 and 3, the grievance was appealed to the District Director on March 24, 1975, where it was again denied on the basis that the grievance ran counter to the provisions of the Federal Personnel Manual.

The remedy sought by the grievant is set forth in Article 7, Section 15.D.1 of the Agreement, which has been described above.

Although no copy of the Union's request to refer the matter to arbitration was submitted with the Application, no party has alleged that such a request was not made in a timely fashion in accordance with the parties' negotiated procedure. The request, which was apparently made by the National President

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3/ The specific factors listed in Article 7, Section 4.H are ". . . the promotion appraisal, past experience and training, relevant incentive awards, and such other material as they /ranking official or panel/ deem necessary."

of the NTEU, was rejected by the IRS on June 16, 1975, on the basis that the grievance was not arbitrable since it conflicted with policies set forth in the Federal Personnel Manual.

The IRS notes that no complaint or grievance was filed by Lageson with respect to the make-up of the list of best qualified candidates. It asserts that the grievance as filed is concerned only with the fact that Lageson was not selected for the position in question.

Further, the IRS contends that the matter at hand is not grievable since Section 12(a) of the Executive Order, the provisions of which are repeated in Article 2 of the Multi-District Agreement, controls in the instant case. 4/ In this connection, the Agency cites several sections of the Federal Personnel Manual which concern the right of a selecting official to promote any of the candidates on a properly ranked and certified list of "Best Qualified" candidates. It argues that the Federal Personnel Manual, in conjunction with Section 12(a) of the Order and Article 2 of the parties' agreement, precludes the grievance at issue from consideration in any grievance or arbitration proceeding.

Further, it contends that at contract negotiations there was no discussion of the possibility that a matter involving a selecting official's decision could proceed to arbitration, allowing an arbitrator to "second-guess" the selecting official. Its understanding was that Sections 2.B.6, 2.C and 7.A of Article 7 were to act as a guide to selecting officials, rather than as a rule or requirement.

The Agency cites two decisions of the Federal Labor Relations Council in support of its position. It compares to the instant matter the decision in Office of Economic Opportunity, Washington, D. C., FLRC No. 74A-59, wherein the Council found a proposed contractual clause to be negotiable since it did not interfere with management's rights to determine who, if anyone, would be selected to fill a vacancy. It also cites Local 63, American Federation of Government Employees, AFL-CIO and Blaine Air Force Station, Blaine, Washington, FLRC No. 74A-33, in which the Council held that a proposed contract provision could have resulted in such substantial delays in filling vacancies as to constitute negation of management's reserved authority under Section 12(b)(2) of the Order to hire, promote, etc.

The Applicants assert that Article 7, Section 4.A of the Multi-District Agreement was violated since the performance appraisal prepared by Lageson's supervisor did not properly reflect her performance, particularly when viewed alongside the more liberal appraisal prepared by the Armed Forces Examining and Entrance Station for the selected employee.

4/ Section 12(a) of the Order provides, in pertinent part:
". . . in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; . . ."

The Applicants contend,moreover, that the IRS may not raise a question as to the negotiability of contractual provisions in the arbitrability setting. They argue that the Agency should have raised such questions during contract negotiations or before final approval of the agreement, at which point the Union would have had the right of direct appeal to the Federal Labor Relations Council. Their alternative position, should the "negotiability" question be found to be material herein, is that the contractual provisions in question, particularly Sections 2.B.6, 2.C and 7.A of Article 7, are negotiable, were in fact negotiated, and are arbitrable in this case. They assert that the implications of the contractual provisions in question were clearly understood by the IRS when it proposed them in negotiations, and that the IRS in fact expressed an interest in "bringing their own people forward".

In the Union's view, under Section 12(a) of the Order, the Federal Personnel Manual "governs where a conflict arises with contract clauses", and it finds no such conflict present in the contractual provisions at issue herein. It feels that Sections 2.B.6, 2.C and 7.A of Article 7 merely prescribe procedures to be followed by management in the selection process, and do not require management to surrender its right to hire and promote. It describes these sections as a "tie-breaking device" or a guideline to be used by management in judging candidates for promotion. Such guidance, the Union feels, is consistent with the policy enunciated by the Council in Veterans Administration Research Hospital, FLRC No. 71A-31, wherein the Council held that negotiation of procedures to be used in reaching a decision is permissible if such procedures do not effectively negate the authority reserved to management under Section 12(b)(2) of the Order.

In my view, resolution of the instant arbitrability question turns on whether or not the grievance in question involves an attempted incursion into areas of authority reserved to management under Section 12(b) of the Order. No party has contended that the grievance does not otherwise fall within the purview of the contractual language of Article 7 of the Agreement cited by the Applicants.

Contrary to the NTEU's argument that negotiability questions may not appropriately be raised in arbitrability proceedings, I find that such questions must be considered in the disposition of grievability or arbitrability matters. That is, if the substance of a grievance and/or its requested remedy runs counter to the mandates of Sections 11 and 12 of the Order, then despite any language agreed upon the parties in a negotiated agreement, such a grievance may not be found to be grievable or arbitrable.

In this regard, in Veterans Administration Research Hospital, Chicago, Illinois, FLRC No. 71A-31, the Council stated:

> Section 12(b)(2) dictates that in every labor agreement management officials retain their existing authority to take certain personnel actions, i.e., to hire, promote, etc. The emphasis is on the reservation of management authority to decide and act on these matters, and the clear import is that no right accorded to unions under the Order may be permitted to interfere with that authority. (Emphasis added.)

With respect to the union's suggestion that, in any event, the language in question was negotiated and that the Agency should have raised any negotiability questions before approving the contract, the Council held, in U. S. Kirk Army Hospital, Aberdeen, Maryland, FLRC No. 70A-11, that: "Although other contracts may have included such provisions, as claimed by the union, this circumstance cannot alter the express language and intent of the Order and is without controlling significance in this case."

In view of the above-cited philosophy enunciated by the Council, I conclude that the language and intent of the Order with respect to management rights under Section 12(b) were intended by the Council to be inviolate. Therefore, questions concerning possible invasion of those rights must be resolved without regard to the forum in which they arise. Thus, the Council relied upon Section 12(b)(2) of the Order in finding an arbitrator's award to be improper inasmuch as it infringed upon Management's authority to make decisions concerning the filling of vacancies.5/ Moreover, it should be noted that I do not in any sense propose to decide the negotiability of the contract sections involved herein; rather, I must consider whether the interpretation by the Applicants of those sections, as it relates to the instant grievance, conforms to the Order.

The Council continued in Veterans Administration Research Hospital, Chicago, Illinois (cited above), as follows:

> However, there is no implication that such reservation of decision making and action authority is intended to bar negotiations of procedures, to the extent consonant with law and regulations, which management will observe in reaching the decision or taking the action involved, provided that such procedures do not have the effect of negating the authority reserved.
>
> Here, the union's proposal would establish procedures whereby higher level management review of a selection for promotion may be obtained before the promotion is consummated. The proposal does not require management to negotiate a promotion selection or to secure union consent to the decision. Nor does it appear that the procedure proposed would unreasonably delay or impede promotion selections so as to, in effect, deny the right to promote reserved to management by Section 12(b)(2). (Emphasis added.)

In my view, the disputed provisions of the parties' negotiated agreement in the instant case merely set forth the procedures to be observed by management in selecting employees for promotion. Thus, the language of Article 7 of the parties'

5/ National Council of OEO Locals, AFGE, AFL-CIO and Office of Economic Opportunity, FLRC No. 73A-67, Report No. 61.

Agreement, as applied to the grievance at hand, would not require management to negotiate a promotion selection or to obtain union consent prior to a promotion appointment. Nor does it establish new criteria for promotion, limit consideration of candidates to those within the Activity at the time of the vacancy, or negate the need to comply with other pertinent FPM requirements, e.g., the need to extend the minimum area of consideration if it does not produce enough highly qualified candidates, etc. 6/

Accordingly, since I conclude that the Applicant's interpretation of the provisions of Article 7 cited in the Application does not contravene the purposes of the Order, I find the grievance at issue to be arbitrable under the terms of the negotiated Agreement.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business August 2, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review, is not filed, the parties shall notify the Regional Administrator for Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Regional Administrator's address is: Room 2200, 911 Walnut, Kansas City, Missouri 64106.

Dated: July 16, 1976

Regional Administrator

Kansas City Region

6/ See Social Security Administration, Headquarters Bureaus and Offices, Baltimore, Maryland, FLRC No. 71A-22, Report No. 39.

GPO 914-949

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

836

January 27, 1977

Carol Haddad, National Field Representative
National Treasury Employees Union
1730 "K" Street, N.W. - Suite 1101
Washington, D.C. 20006

Re: Internal Revenue Service
Indianapolis, Indiana
Case No. 50-13135(CA)

Dear Ms. Haddad:

This in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on December 9, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on December 27, 1976. You requested an extension of time to file and were given until January 10, 1977, for the request for review to be received. Your request for review was hand-delivered on January 11, 1977, and therefore was received by the Assistant Secretary subsequent to the date you were allowed.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Bernard E. DeLury
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

INTERNAL REVENUE SERVICE,
INDIANAPOLIS DISTRICT OFFICE,
INDIANAPOLIS, INDIANA,

Respondent

and Case No. 50-13135(CA)

NATIONAL TREASURY EMPLOYEES UNION, (NTEU)
AND NTEU CHAPTER 49,

Complainant

The complaint in the above-captioned case was filed on March 15, 1976, in the Office of the Chicago Area Administrator.. It alleges a violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended. The complaint has been investigated and carefully considered. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the complaint has not been established, and I shall therefore dismiss in its entirety the complaint in this case.

It is alleged that the Respondent violated Sections 19(a)(1) and (6) of the Order by its failure to properly consult and confer with the Complainant relative to the introduction of a revised travel itinerary form for the use of certain unit employees (Estate and Gift Tax Attorneys) in the Indianapolis District of the Internal Revenue Service.

The initial charge in this matter was made on September 19, 1975, to the District Director. The basis of the charge is described as a refusal on the part of the Respondent to negotiate over the implemention of the above mentioned revised form.

It is the Respondent's position that the facts set forth in the complaint do not constitute an unfair labor practice under the Order because the Internal Revenue Service has no responsibility to confer and consult with the National Treasury Employees Union regarding the use of the Travel Itinerary Form itself, which it terms "a methods and means" of conducting its agency operations; and that the Complainant was afforded four separate opportunities to discuss the issue or submit proposals with respect to the possible impact on working conditions of the revised form prior to its final implementation.

Since the complaint does not raise questions relative to the nature of the revised form itself, no attempt will be made here to address that issue. The evidence shows that although the revised form was first introduced on May 30, 1975, the requirement for its mandatory usage was withdrawn on June 30, 1975, which is the first

date that the Respondent was put on notice by representatives of the Complainant that the revised form's introduction was being challenged. The Respondent subsequently solicited suggestions and recommendations from the Complainant on the use of the revised form in letters dated July 18, 1975 and August 28, 1975. Investigation reveals that the Complainant did not avail itself of either of these opportunities. The Respondent, however, did meet with the Complainant on November 11, 1975, subsequent to the filing of the pre-complaint charge, in an unsuccessful attempt at informal resolution of the issue.

The evidence, then, does not support a conclusion that there was a refusal to consult and confer with the exclusive representative on the part of the Respondent concerning this matter. At the first notification that exception was being taken to the introduction of the revised form, the Respondent issued instructions that the continued use of this form would be optional. Although the Complainant contends that the mandatory usage of this form was never rescinded, no evidence was submitted to substantiate this contention.

In a letter dated August 28, 1975, Respondent solicited Complainant's specific proposals for negotiation concerning the travel itinerary form. Complainant was informed in the letter that the proposals would be considered. On September 3, 1975, Complainant responded by letter informing Respondent that it considered preparing proposals to be a waste of time and energy and issued an ultimation demanding negotiations by September 18, 1975, or NTEU would consider the remedy available through the Department of Labor. Under the circumstances of the instant case, it cannot be concluded that Respondent's position on the issue was so intransigent that Complainant could have reasonably believed its proposals would be disregarded. Further, the evidence suggests that, at all times material during the period from June 30, 1975, when the mandatory usage of the form was withdrawn to late September, 1975 when the form was implemented, Respondent expressed a willingness to negotiate regarding the impact of the use of the form but Complainant was not responsive to the opportunity.

Accordingly, I find no reasonable basis established by the Complainant for the finding of a violation in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business December 27, 1976.

Dated at Chicago, Illinois this 9th day of December, 1976.

R. C. DeMarco, Regional Administrator
United States Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

2-4-77

Mr. Ralph J. Pellegrini, President
Local 911, American Federation of
Government Employees, AFL-CIO
6931 North Olcott
Chicago, Illinois 60604

Re: U.S. Department of Housing
and Urban Development
Chicago Area Office
Case No. 50-13180(CA)

Dear Mr. Pellegrini:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. In this regard, it was noted that your request for an extension of time in which to file a request for review in this matter was denied on January 7, 1977. As you were advised in the Regional Administrator's dismissal letter in the instant case, dated December 9, 1976, a request for review of the dismissal had to be received by the Assistant Secretary not later than the close of business December 27, 1976. Your request for review, dated January 6, 1977, and received thereafter is, therefore, clearly untimely.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

U. S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT,
CHICAGO AREA OFFICE,
CHICAGO, ILLINOIS,

Respondent

and

Case No. 50-13180(CA)

LOCAL 911, AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES (AFGE), AFL-CIO,

Complainant

DISMISSAL OF COMPLAINT

The complaint in the above-captioned case was filed on September 27, 1976, in the Office of the Chicago Area Administrator. It alleges a violation of Section 19(a)(1), (2), (4) and (6) of Executive Order 11491, as amended. The complaint has been investigated and carefully considered. It appears that further proceedings are not warranted, inasmuch as the complaint is procedurally defective, and I shall therefore dismiss the complaint in its entirety in this case.

It is alleged that the Respondent violated Sections 19(a)(1), (2), (4) and (6) of the Order by temporarily reassigning the president of Complainant labor organization from the position of Appraiser, Multifamily Valuation to Section 518(B), Single Family Valuation activities without prior consultation with the union. Complainant first raises the matter of the president's reassignment; the reassignment of approximately eight (8) other unit employees to Section 518(B) responsibilities; the method of selection of these employees; the history of the local president's conflict with some supervisors; the legality of the detail to Section 518(B) activities; the feasibility of meeting the need of the 518(B) program with other personnel; and other unspecified but apparently related matters occurring within the context of a meeting with Respondent's representatives on July 6, 1976. This meeting concerned the processing of an oral grievance, pursuant to paragraphs 14, 15 and 16 of HUD Handbook 771.2, Employee Grievances, dated June 1973. In follow-up of the June 6 meeting, the local union president presented twenty-two (22) individual charges and proposed remedies to Respondent in a memorandum dated August 14, 1976. These twenty-two (22) charges center around the above-mentioned reassignment and detail other allegations of union and/or personal harassment directed at the union president, and other officers and members of the local union.

Item 3 of the complaint filed on September 27, 1976 refers to a copy of Complainant's July 14, 1976 memorandum to Respondent alleging violations of Sections 19(a)(1), (2) and (6) of the Order; a copy of

Complainant's August 14, 1976 memorandum containing twenty-two (22) separate charges; a copy of a memorandum from Complainant to Respondent dated August 23, 1976, charging Respondent with a violation of Section 19(a)(4) of the Order for disciplining the local union president for filing the Complaint and a copy of a memorandum dated August 25, 1976, furnishing Respondent's final decision in this matter.

In response to this large volume of material purporting to be a "clear and concise statement of the facts constituting the alleged unfair labor practice, the names and addresses of the individuals involved and the time and place of occurrence of the particular acts," a letter was sent by the Area Administrator to Complainant dated October 4, 1976 requesting a modification of Section 3 ("Basis of Complaint") of LMSA Form 61 to comply with the instructions appearing thereon. Additionally, since it appears several, if not all of Complainant's charges were previously raised in the context of a grievance, the Complainant was requested to consider the deletion of those items prohibited from being raised in this forum as provided in Section 19(d) of the Order. 1/ Section 203.8 of the Regulations of the Assistant Secretary, which states that the Regional Administrator may dismiss a complaint upon finding that a reasonable basis for the complaint has not been established, was also cited in the above-referenced letter. Finally, Complainant was advised that failure to comply with the above request in ten (10) days from the date of receipt of this letter could result in a dismissal recommendation by the Area Administrator to the Regional Administrator.

Complainant did not respond to the Area Administrator's letter and has not complied with the request set forth in the letter. I find this October 4, 1976 request to be reasonable, proper and necessary in order for an investigation of the Complaint by the Area Administrator to be undertaken. Further, on October 27, 1976, Complainant met with a representative of the Area Administrator and advised that he was not amending the Complaint or offering additional evidence to support the present Complaint.

Accordingly, I am able to consider only the material submitted by Complainant in the manner and the form in which it was submitted. The material submitted is largely conclusionary without supporting connecting facts showing that Respondent's actions were predicated on

1/ Section 19(d) of E. O. 11491, as amended, provides that when a grievable issue includes an alleged unfair labor practice, the aggrieved party has the option of seeking redress through the grievance procedure, or under the unfair labor practice procedure described in the Order, but not both.

proscribed motivation or had an effect which violates rights protected by the Order. It is well settled under the Assistant Secretary's Rules and Regulations that the Complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in its Complaint. 2/

In the instant case, I find that Complainant has not met the initial burden of establishing a reasonable basis for the Complaint. Therefore, the Complaint in this case must be and hereby is dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business December 27, 1976.

Dated at Chicago, Illinois, this 9th day of December, 1976.

R. C. DeMarco, Regional Administrator
United States Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

2/ See 29 CFR: Section 203.6(e)

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

838

2-7-77

Catherine Calhoun, Chief Steward
National Federation of Federal
Employees, Ind., LU 273
622 Bishop Road, Apt. L-16
Lawton, Oklahoma 73501

Re: National Federation of Federal
Employees, Local Union 273
Case No. 63-7069(CO)

Dear Mr. Calhoun:

This in connection with your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Acting Regional Administrator issued his decision in the instant case on December 30, 1976. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on January 14, 1977. Your request for review postmarked on January 13, 1977 was not received by the Assistant Secretary until after the date it was due.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

December 30, 1976

Re: 63-7069(CO) National Federation of Federal Employees, Ind., LU 273, Respondent and Catherine Calhoun, Lawton, Oklahoma, Complainant

Ms. Catherine Calhoun
Chief Steward
National Federation of Federal Employees, Ind., LU 273
622 Bishop Road, Apt. L 16
Lawton, Oklahoma 73501

Dear Ms. Calhoun:

The above captioned case alleging violations of Section 19(b)(1) of Executive Order 11491, as amended, has been investigated and considered carefully.

On the basis of all the evidence presented, it does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

In your complaint, you allege that the Respondent violated Section 19(b)(1) of the Order by his failure to submit additional information to the Department of Labor in Case No. 63-6460(CA) and 63-6463(CA); by his withholding of correspondence and pertinent information from yourself and other employees; and by his failure to notify yourself and LU 273 members and National Federation of Federal Employees National Headquarters that these two Unfair Labor Practices had been withdrawn by him. The Respondent, in response to inquiry, states that all material requested by you or by Dr. Crook was supplied; that these two Unfair Labor Practice complaints were withdrawn at the request of the Department of Labor and with the advice of National Federation of Federal Employees National Headquarters; and that all interested parties were advised of Jensen's actions.

As you were advised, in your telephone discussion October 27, 1976 and by confirming letter, dated October 28, 1976, it is necessary to demonstrate, by evidence, coercion, restraint or interference of individual employees in the exercise of their right to form, join or assist a labor organization or to refrain therefrom. You were advised that in the absence of such evidence or your withdrawal of this complaint, it would be dismissed for the failure to sustain your burden of proof under Section 203.6(e) Assistant Secretary Regulations. You have submitted no evidence of union restraint or interference with or coercion of employees in the exercise of rights assured them by the Order. I am, therefore, dismissing this complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service must accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W. Washington, D. C. 20216, not later than the close of business January 14, 1977.

Sincerely,

THOMAS R. STOVER
Acting Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

2-7-77 839

Mr. Ernest J. Lehmann
President, Overseas Federation of
Teachers, AFL-CIO
Verona American School
APO, New York 09453

Re: Department of Defense
Dependents Schools
European Region
Case No. 22-6866(CA)

Dear Mr. Lehmann:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that a reasonable basis for the instant complaint has not been established. Thus, it has been held previously that alleged violations of a negotiated agreement which concern differing and arguable interpretations of such agreement, such as the case herein, as distinguished from alleged action which would constitute clear, unilateral breaches of the agreement, are not deemed to be violative of the Order and that, under such circumstances, the aggrieved party's remedy for such matters lies within the grievance machinery of the parties' negotiated agreement, rather than through the unfair labor practice procedures. Cf. Department of the Army, Watervliet Arsenal, Watervliet, New York, A/SLMR No. 624, and Federal Aviation Administration, Muskegan Air Traffic Control Tower, A/SLMR No. 534.

Accordingly, and noting the absence of sufficient evidence to establish that the Respondent failed to meet its bargaining obligations under the Order, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary
of Labor

Attachment

LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

August 4, 1976

Mr. Otto J. Thomas, President
Overseas Federation of Teachers/
American Federation of Teachers (AFL-CIO),
Verona School
APO New York 09453

Re: Department of Defense Dependents Schools,
European Region
Case No. 22-6866(CA)

Dear Mr. Thomas:

In the above-captioned case, you allege that the Department of Defense Dependents Schools, European Region, violated Sections 19(a)(1) and (6) of Executive Order 11491, as amended, by unilaterally terminating a meeting with the Overseas Federation of Teachers on February 23, 1976. After investigating the complaint and carefully considering the facts in the case, I have concluded that further proceedings are not warranted inasmuch as a reasonable basis for the complaint has not been established.

The investigation revealed that the meeting was held pursuant to Article 6 of the parties' negotiated agreement and that a dispute arose as to whether one of the Union's representatives could be considered an "advisor" under the terms of the negotiated agreement. After the matter was discussed at some length, the Activity terminated the meeting, stating that it would reconvene if the Union reconstructed its team in compliance with the terms of the agreement.

You argue that the Respondent was required by the Executive Order to hold the consultation meeting. However, you do not contend that the parties were involved in contract negotiations or that the meeting resulted from an OFT request to bargain over a proposed mid-contract change. Moreover, you state that the parties were meeting under the terms of the negotiated agreement and describe the benefits, such as per diem and travel expenses paid for by the Activity, that occurred to union team members. It is apparent from the evidence presented that the alleged unfair labor practice stems from a disagreement over the application and interpretation of the negotiated agreement. The Assistant Secretary will not consider, in the context of an unfair labor practice, a dispute over the interpretation of a negotiated agreement, but will leave the parties to their own remedies under the agreement. 1/

1/ Assistant Secretary's Report on a Ruling, Report No. 49.

For the foregoing reason, I find that you have not established a reasonable basis for your allegation that Sections 19(a)(1) and (6) of the Order were violated and I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8 of the Assistant Secretary's Regulations, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of such request must be served on the Respondent and this office. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons on which it is based and must be received by the Assistant Secretary not later than fifteen (15) days from receipt of this letter.

Sincerely,

Eugene M. Levine
Acting Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

2-10-77 840

Mr. Paul J. Hayes
President, Local R14-32
National Association of Government
Employees
P. O. Box 104
Fort Leonard Wood, Missouri 65473

Re: U. S. Army Training Center
Fort Leonard Wood, Missouri
Case No. 62-4875(GA)

Dear Mr. Hayes:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the Application For Decision On Grievability Or Arbitrability in the above named case.

The evidence reveals that you filed the instant Application on June 4, 1976, although a final written rejection of a request to proceed to arbitration by the Activity had not yet been sought and received, inasmuch as arbitration was not invoked. Thus, in agreement with the Regional Administrator, I find that the instant application is procedurally defective, as an application will not be processed by the Assistant Secretary until all the remedies in the parties' negotiated agreement have been exhausted. Therefore, as the parties' negotiated agreement herein provides for arbitration, arbitration must have been invoked and rejected in writing, which was not done herein. In this connection, see Report On A Ruling Nos. 56 and 61 (copies attached).

Under these circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the Application For Decision On Grievability Or Arbitrability, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary
of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

September 10, 1976

In Reply Refer To: 62-4875(GA)
U. S. Army Training Center at
Fort Leonard Wood, Fort Leonard
Wood, Missouri/NAGE, Local R14-32

Mr. Paul J. Hayes
National Vice President
National Association of Government Employees
31 Holly Drive
Belleville, Illinois 62221

Dear Mr. Hayes:

Your Application for Decision on Grievability or Arbitrability filed pursuant to Executive Order 11491, as amended, on June 4, 1976, in the office of the St. Louis Area Administrator has been reviewed and considered carefully. The grievance, which is the subject of the Application, was filed on April 9, 1976, and alleged that the U. S. Army Training Center Engineer and Fort Leonard Wood at Fort Leonard Wood, Missouri, had failed to properly promote two employees, George A. Detherage and Buenaventura Sambrano. By letter of May 12, 1976, the Activity rejected the grievance, stating, in part, that the grievance had not been timely filed. It is that aspect of the grievance which the Applicant has referred to the Assistant Secretary for consideration.

Section 205.2(b) of the Regulations of the Assistant Secretary provides that an application must be filed within sixty days after service on the applicant of a final written rejection, expressly designated as such. Although in Major General John G. Waggener's letter of May 12, 1976, to Local R14-32 President Charles Sherrell it is stated that the letter constitutes written rejection of the grievance, I do not find that such a statement satisfies the requirements of Section 205.2 of the Regulations.

It is contemplated by the Executive Order that the parties exhaust all remedies available to them before bringing their misunderstandings and disagreements to the Assistant Secretary for decision and/or resolution. For this reason, Section 205.2 requires a final written rejection of the grievance. The investigation discloses that you have not attempted to exhaust the contractual remedies available, i.e., there has been no request that the matter be referred to arbitration. It is noted in this regard that Article 26, Grievance Procedure, Section 10 and Article 27, Arbitration, of the parties' agreement provide that, under the circumstances present herein, the Union has the right to request such a referral. Under the particular circumstances present herein. it is my view that, in the

absence of a request for arbitration and an ensuing refusal to so proceed by the Activity, there has not been a final rejection of the grievance as contemplated by Section 205.2 of the Assistant Secretary's Regulations.1/

Accordingly, I find that the Application has not been timely filed and it is therefore dismissed.2/

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other party to the agreement. A statement of service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C., 20216, not later than the close of business September 27, 1976.

Sincerely,

THOMAS R. STOVER
Acting Regional Administrator
Labor-Management Services

1/ The file reflects no indication by the Activity of any intent to refuse to submit the subject grievance to arbitration for resolution.

2/ In view of the decision reached herein, I am precluded from considering the merits of issue raised in the Application and, accordingly, I make no determination in that regard.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

841

2-10-77

Robert L. Metzger, President
American Federation of Government
Employees, AFL-CIO, Local 3435
P.O. Box 8755
Columbus, Ohio 43215

Re: U.S. Department of Housing and
Urban Development
Columbus, Ohio
Case No. 53-09347(CA)

Dear Mr. Metzger:

This is in connection with your request for review seeking reversal of the Acting Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Acting Regional Administrator issued his decision in the instant case on December 23, 1976, As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on January 7, 1977. Your request for review postmarked on January 6, 1977 was not received by the Assistant Secretary until after the date it was due.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT,
COLUMBUS, OHIO,

Respondent

and

Case No. 53-09347(CA)

LOCAL 3435, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO,

Complainant

The Complaint in the above-captioned case was filed on September 7, 1976, in the office of the Cleveland Area Administrator. It alleges a violation of Sections 19(a)(1) and 19(a)(2) of Executive Order 11491, as amended. The Complaint was timely filed. The Complaint has been investigated and, together with all evidence submitted by the parties in interest, has been carefully considered.

On June 25, 1976, Complainant filed its precomplaint charge with Respondent in the instant case. Section 203.2(3) of the Assistant Secretary's Rules and Regulations requires that the charge shall contain a clear and concise statement of the facts constituting the unfair labor practice, including the time and place of occurrence of the particular acts. A careful review of the charge discloses only a contention that after six months the Respondent has not reassigned Ms. Hill. The Complaint in the instant case alleges that Respondent has discriminated against Ms. Hill by (1) refusing transfer; (2) passing over her for promotion; (3) forcing her to do duties against doctor's certificate, and (4) detailing her indiscriminately. The Assistant Secretary's Rules and Regulations at Section 203.2(b) require that a Complaint be limited to the matters raised in the charge. Accordingly, I find that I can consider only the matter of Respondent's alleged failure and/or refusal to reassign or transfer Ms. Hill because of her union affiliation.

The Respondent is correct in its July 2, 1976 letter of final response to Complainant's charge in which it takes the position that the determination to reassign is a management reserved right within the meaning of Section 12(b) of Executive Order 11491 which has been incorporated in the negotiated agreement between the parties. Complainant did not submit evidence and the investigation by the Area Administrator did not disclose evidence that Respondent's failure and/or refusal to transfer Ms. Hill was based on anti-union animus or was motivated in whole or in part because of her affiliation or work on behalf of Complainant. No evidence was provided that Ms. Hill was treated disparately based on her union affiliation from other similarly placed employees by Respondent in executing its reassignment policy.

Having considered the aforementioned findings, it is my conclusion that Complainant has not met its initial burden of proving that a reasonable basis for the Complaint exists. Therefore, the Complaint must be and hereby is dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a Request for Review with the Assistant Secretary and serving a copy upon this office and the Respondents. A statement of service should accompany the Request for Review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, Washington, D. C. 20216, not later than close of business January 7, 1977.

Dated at Chicago, Illinois, this 23rd day of December 1976.

LeRoy L. Bradwish
Acting Regional Administrator
United States Departmentof Labor
Labor-Management Services Administratio
Federal Building, Room 1060
230 South Dearborn Street
Washington, D. C. 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
2-10-77

842

Mr. Luther Adams
Civilian Personnel Officer
Civilian Personnel Division
Redstone Arsenal, Alabama 35809

Re: U.S. Army Missile Command
Redstone Arsenal, Alabama
Case No. 40-7008(GA)

Dear Mr. Adams:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's Report And Findings On Arbitrability, in which he concluded that the matter raised by the subject grievance is arbitrable under the terms of the parties' negotiated agreement.

In agreement with the Acting Regional Administrator, I find that the matter herein is arbitrable in that it involves the interpretation or application of Article XXVII of the parties' negotiated agreement. In this regard, it was noted particularly that, under the current circumstances herein, it is undisputed that the grievances involved are not on matters subject to a statutory appeal procedure. Moreover, it was noted that under the Executive Order, where an arbitrator has issued an award which a party contends is violative of applicable law, appropriate regulations or the Order, it may seek review by the Federal Labor Relations Council.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report And Findings On Arbitrability, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U. S. ARMY MISSILE COMMAND
REDSTONE ARSENAL, ALABAMA

Activity

and

LOCAL 1858, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Applicant

Case No. 40-7008(CA)

REPORT AND FINDINGS
ON
ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability duly filed under Section 205 of the Regulations of the Assistant Secretary, an investigation of the matter has been conducted by the Area Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

The Applicant labor organization filed an Application for Decision on Grievability or Arbitrability with the Atlanta Area Office on May 7, 1976. This application seeks a determination as to whether or not three grievances initiated under the parties' agreement are on a matter subject to arbitration. The grievances which had been filed under the procedure set forth in Article V of the parties' agreement alleged violations of Article XXVII of the agreement. Essentially, the issue before me for determination is whether a statutory appeals procedure exists covering the matter raised in the grievances, thereby barring such grievances from adjudication under the procedure in the negotiated agreement. 1/

The agreement involved covers a unit of approximately 5,000 non-professional employees of the Activity. The agreement was effective on March 6, 1975, and is of three years' duration; it therefore was in effect at all times material to this application.

The circumstances giving rise to the grievance are as follows:

On September 25, 1975, unit employees John W. Ramsden, Barbara S. Shrout and John C. Waid, initiated grievances with their immediate supervisor, Edward W. Summers, Chief of the Programs Division of the Activity. No resolution was reached and the grievances proceeded to the second step of the procedure specified in Article V, Section 3 of the parties' negotiated agreement. On October 1, 1975, a meeting was held between the grievants and their representatives and Activity's representatives in attempts to resolve the grievances. No resolution was reached. On October 15, 1975, the grievances were consolidated, reduced to writing, and a request was made to forward the matter to the third step of the negotiated procedure. The written grievance alleges violation of Article XXVII of the agreement. It seeks the combination of the 345-GS-12 competitive levels 311, 314 and 316. Article XXVII reads:

a. Competitive levels for positions that are interchangeable will be the same for all organizations of the competitive area. Like positions will not be placed in different competitive levels based solely on organizational structure within the competitive areas. Further, employees will, upon request, be advised of their initial competitive level and subsequent changes, if any, by the Civilian Personnel Division.

b. Fragmented (i.e. separate) competitive levels shall not be used to circumvent reduction in force procedures prescribed in FPM 351. Competitive levels will be established in accordance with FPM 351. Jobs so similar in all important respects that the employees can be readily moved from one job to another without significant training

1/ Section 13(a) of the Order states in part: "The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists . . ."

and without unduly interrupting the work program will be placed in the same competitive level.

In accordance with an option available to aggrieved employees under the provisions of the negotiated grievance procedure, a grievance investigator was selected to investigate the grievances. On December 8, she issued her report on the grievances, concluding that positions in Series 345-GS-12 under competitive level 311 and 314 be placed under a single competitive level. She further recommended that positions under competitive levels 311, 314 and 316 be further screened for possible inclusion under this competitive level. In accordance with Article V, Section 3c(5) the Commander of the Activity issued his decision on the findings of the grievance examiner through letters dated January 16, 1976, and addressed to each of the three grievants. In each case, he found that the positions in question were not interchangeable as they differed in qualification requirements. He therefore denied each of the grievances. In a letter dated February 9, 1976, the Applicant requested that arbitration be invoked on the grievances under the provisions of Article V, Section 5. 2/ On March 8, 1976, the Activity denied the grievability and arbitrability of the grievances on the basis that the matter raised in them was covered by a statutory appeals procedure; this rejection was expressly designated as a final rejection.

It is the Applicant's position that as the appeals procedure contained in Federal Personnel Manual (FPM), Chapter 351, Subchapter 9-1 can be invoked only when a reduction in force notice has been issued, no statutory appeals procedure exists where no such notice has been issued. Therefore, applicant contends the matter raised in the grievance should be resolved under the arbitration provisions since it is covered by Article XXVII.

It is the Activity's position that as the matter raised in the grievances is covered by a statutory appeals procedure, once a reduction in force notice is issued, it is precluded from coverage under the grievance and arbitration provisions of the parties' agreement. In this respect the Activity notes that in the event a reduction in force does occur which impacts on the grievants, a statutory appeals procedure will be available to them. It further notes that permitting this matter to be processed under the grievance procedure at the present time may result in dual adjudication of the matter in different forums should a reduction in force notice subsequently be issued and the statutory appeal procedure pursued.

It is clear that the procedure specified in Subchapter 9 of Chapter 351 of the FPM provides a statutory appeal only for those employees who have had notice of proposed reduction in force. Only then may they appeal to the Civil Service Commission over an improperly drawn competitive list. The Civil Service Commission will not accept such an appeal unless a reduction in force notice has been issued.

In the instant case no such notice has been issued to the employees involved. Therefore, no appeal to the Commission is available. Under these circumstances I find that a statutory appeal covering their present complaint does not exist. Therefore, a statutory appeal procedure cannot be held to bar the processing of the instant grievance.

The provisions of Article V, Section 5 of the parties' agreement clearly provide for submission to arbitration of unresolved grievances over the interpretation or application of the agreement.

2/ Article 5, Section 5 of the parties' agreement reads in part:

a. This procedure provides for the arbitration of unresolved grievances arising over the interpretation or application of this AGREEMENT which have been processed under the provisions of this Article. Arbitration may be invoked by the Employer and/or the Union but not by the employee.

b. Only those grievances which directly involve the interpretation or application of the specific terms and provisions of this AGREEMENT may be submitted to arbitration under this Article. Grievances involving the interpretation or published Department of the Army or higher laws, policies or regulations shall not be subject to this procedure regardless of whether such laws, policies or regulations are quoted or cited in this AGREEMENT.

In reaching this determination I have considered the Activity's argument that permitting the arbitration of these grievances at the present time would allow dual adjudication of the grievances should a reduction in force notice affecting the employees be issued at some future date. Even if this is so it would not justify a finding that the Applicant is not entitled to arbitration under the contract.

Based on the above, I conclude that Article XXVII covers the matter raised in the grievance. Accordingly, I find that the grievance is on a matter subject to arbitration in an existing agreement.

Having found the matter to be arbitrable, the parties are hereby directed to further process it in accordance with their negotiated procedures.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request for review must be served upon the undersigned as well as the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business July 29, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review, is not filed, the parties shall notify the Regional Administrator for Labor-Management Services, U. S. Department of Labor, in writing within 30 days from the date of this decision as to what steps have been taken to comply herewith. The address of the Regional Administrator is 1371 Peachtree Street, N.E., Room 300, Atlanta, Georgia 30309.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: July 14, 1976

SEYMOUR X ALSHER
Acting Regional Administrator

U.S DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

FEB 15 1977

Mr. Leo D. Smith
7023 Quig Street, Apt. 517
San Antonio, Texas 78223

re: Leo D. Smith, Complainant
Local 1617, AFGE, Respondent
File 63-6452(18)

Dear Mr. Smith:

I have carefully considered your request for review of the Regional Administrator's dismissal of your March 23, 1976, complaint in case number 63-6452 brought under the Bill of Rights provisions of the Regulations implementing Section 18, Standards of Conduct, of Executive Order 11491.

The Regional Administrator dismissed your complaint because you had confirmed your reinstatement to membership and office in Local 1617 by a letter of October 14, 1976, to Dallas Area Administrator Oscar E. Masters which resolved your section 204.2(a)(5) complaint concerning your improper expulsion from membership in the local. He indicated that your request for punitive action, in the form of expulsion from membership in Local 1617, against Mr. Roger L. Vachon who was President of Local 1617 when you were expelled was not within the authority of the Assistant Secretary for Labor-Management Relations.

I concur with the Regional Administrator's decision to dismiss your Bill of Rights complaint based on all the information before him, including your letter of October 14, 1976. Any actions by local officers subsequent to your reinstatement which you feel violate your rights under section 204.2(a)(1) or 204.2(a)(2) to attend and participate in union meetings should be raised in a complaint alleging violations of those sections if you are unable to achieve a settlement of your problem within the union itself. I also concur with the Regional Administrator that your request for disciplinary action against

Mr. Vachon and others who participated in your expulsion is not a matter that can be handled under the provisions of Executive Order 11491 or the Regulations implementing it.

Two other matters that you raised are not issues involving the Bill of Rights. The question of intimidation and threats of violence against you in connection with the filing of an election complaint with the Labor-Management Services Administration has been considered in connection with a current election case challenging the November 1975 election of officers in Local 1617. The allegations of a conflict of interest and violation of sections 204.31 and 204.33 of the Regulations by Mr. Vachon is moot because those sections of the Regulations apply only to union officers and agents and Mr. Vachon was not an officer or employee of the local at the time you filed your complaint on March 26, 1976, and is not now an officer or employee.

Therefore, for the above reasons, I concur with the decision of the Regional Administrator for Labor-Management Services. Accordingly, your request for reversal of the Regional Administrator's dismissal of your complaint is denied.

Sincerely yours,

Jack A. Warshaw
Acting Assistant Secretary
of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET - ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

October 26, 1976

Mr. Leo D. Smith
7023 Quig Street, Apartment 517
San Antonio, Texas 78223

Ref: 63-6452 (18)

Dear Mr. Smith:

On March 23, 1976 you filed a Complaint at our Dallas Area Office alleging violation of your rights protected under Section 204.2 of the Rules and Regulations of the Assistant Secretary for Labor-Management Relations. You alleged, in essence, that your membership in Local 1617, American Federation of Government Employees (AFGE), AFL-CIO and officeholding as Chairman of the Insurance Committee and thus a member of the Executive Board of Local 1617, was terminated on or about August 1, 1975. As of the date you filed your Complaint, you had been unsuccessful in obtaining corrective action through intra-union appeals.

We have investigated your Complaint and we have determined that Local 1617, acting on instructions of the National Executive Council, AFGE, reinstated you to membership on September 2, 1976, retroactive to August 1, 1975, and you were orally advised on September 27, 1976 by Andrew G. Sanchez, President, Local 1617, that you had been reinstated as Chairman, Insurance Committee and member of the Executive Board.

By letter dated October 14, 1976 to Dallas Area Administrator Oscar E. Masters, you confirm your reinstatement to membership and office in Local 1617, but reassert your request for punitive action, in the form of expulsion from membership in Local 1617, against Roger L. Vachon who was President of Local 1617 when you were expelled on August 1, 1975.

After considering all of the information before me, I conclude that Local 1617, AFGE, has properly reinstated you to membership and office, retroactive to August 1, 1975, and the punitive action which you request against Roger L. Vachon is not within the authority of the Assistant Secretary for Labor-Management Relations. Therefore, no further action will be taken by this office and, pursuant to Section 204.58 of the Rules and Regulations, your Complaint is dismissed.

Section 204.59 of the Rules and Regulations provides that you may obtain a review of my decision by the Assistant Secretary. A request for review must be received by the Assistant Secretary by or before the close of business, November 10, 1976, and should be addressed to: Assistant Secretary for Labor-Management Relations, Attn: Director, Office of Labor-Management

Standards Enforcement, Room N5408, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216. Your request for review must contain a complete statement of the facts and reasons upon which a request is based. Further, you must serve a copy of your request on this office and on Local 1617, AFGE, and so state to the Assistant Secretary.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
2/28/77

844

Philip J. Kelly, President
American Federation of Government
Employees
Local 1151, AFL-CIO
252 7th Avenue
New York, New York 10001

Re: American Federation of Government
Employees, AFL-CIO
Case No. 22-7444

Dear Mr. Kelly:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 18(a)(1) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Acting Regional Administrator, that the evidence is insufficient to establish a reasonable basis for the instant complaint and that, consequently, further proceedings in this matter are unwarranted. In this connection, in addition to the Acting Regional Administrator's finding, it was noted that there is no showing that there was a violation of any of the provisions or procedures contained in the Respondent's Constitution or Bylaws. I have also been administratively advised that adjournment of the Convention giving rise to this complaint was accomplished at a time sufficient to allow all delegates to arrive home before sundown on the eve of the holy day.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

September 13, 1976

Mr. Philip J. Kelly
President A.F.G.E. Local 1151
252 7th Avenue
New York, N.Y. 10001
(Certified Mail #659106)

Re: American Federation of Government Employees (National Office) (Respondent)
and
Philip J. Kelly, President A.F.G.E. Local 1151
Case No. 22-7444

Dear Mr. Kelly:

Your complaint alleging violations of Section 18 (a)(1) of EO 11491 as amended has been investigated and considered carefully. It does not appear that further proceedings are warranted.

You allege that by scheduling the A.F.G.E. National Convention from September 20, 1976 to September 24, 1976 the respondent has committed violations of Section 18 because the last day of the convention will conflict with Rosh Hashana, a holy day for Jewish members.

In keeping with established policy of the Labor Management Services Administration, I must dismiss your complaint as untimely, pursuant to Section 204.54 of the regulations of the Assistant Secretary on the grounds that no violation has yet occurred.

Pursuant to Section 204.59 of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Labor Management Standards Enforcement, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany this request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business September 28, 1976.

Sincerely,

Frank P. Willette
Acting Regional Administrator for
Labor Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
2/28/77

845

Mr. Philip J. Kelly
President, V.A. Local 1151, AFGE
252 Seventh Avenue
New York, New York 10001

Mr. Morris Persky
First Vice President
V.A. Local 1151, AFGE
252 Seventh Avenue
New York, New York 10001

Mr. Harry H. Zucker
Member-Executive Committee
V.A. Local 1151, AFGE
252 Seventh Avenue
New York, New York 10001

Re: American Federation of Government Employees, AFL-CIO, New York, New York
Case No. 22-07372

Gentlemen:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 19(b)(5) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis for the instant complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Thus, it appears that the complained of discrimination had not taken place at the time your complaint was filed on July 23, 1976. Moreover, it was noted that the Executive Committee of the Respondent, at a meeting in December 1975, passed a motion to recommend to the Rules Committee that the Union's Convention be adjourned by 12:05 a.m. on Friday, September 24, 1976, so as to avoid a Rosh Hashanna conflict. Furthermore, I have been administratively advised that the Convention was, in fact, adjourned at an hour that permitted all in attendance to arrive home before sundown on September 24, 1976. Nor is there any showing that, in fact, any of the Complainants, or those on whose behalf the complaint was brought, were disenfranchised from exercising their rights or duties as delegates to the Convention because of their religious beliefs.

Under all of these circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

PHILADELPHIA, PA. 19104
TELEPHONE 215 597-1134

September 8, 1976

Mr. Phillip J. Kelly
President, V.A. Local 1151, AFGE
252 Seventh Avenue
New York, New York 10001
(Certified Mail No. 452275)

Mr. Morris Persky
First Vice President
V.A. Local 1151, AFGE
252 Seventh Avenue
New York, New York 10001
(Certified Mail No. 452276)

Mr. Harry H. Zucker
Member - Executive Committee
V.A. Local 1151, AFGE
252 Seventh Avenue
New York, New York 10001
(Certified Mail No. 452277)

Re: American Federation of
Government Employees
National Office
Case No. 22-7372(CO)

Gentlemen:

Your unfair labor practice complaint in the above-captioned case alleging a violation of Section of Executive Order 11491, as amended, (hereinafter, the Order) has been investigated and carefully considered. It does not appear that further proceedings are warranted.

Your complaint specifically alleges that the American Federation of Government Employees (hereinafter, the Respondent) violated Section 19(b)(5) of the Order by scheduling, "contrary to the provisions of Article V, Section 4(a) of the National Constitution of the said AFGE ... its National Convention starting on September 20, 1976 through September 24, 1976 inclusive, in total disregard of the notice, timely given in accordance with the cited constitutional provision, that the Jewish Holy Day of Rosh Hashanna starts on September 24, 1976 and that observing Jews could not travel past sundown.[1]

[1] Complaint Against Labor Organization filed July 23, 1976.

The Area Administrator's investigation disclosed that on or about October 3, 1975, and again several times thereafter, the Respondent was informed, by letter from New York City A.F.G.E. Council President Timothy Chang, of the conflict between the proposed dates of the Respondent's National Convention and the Jewish Holy Day of Rosh Hashanna. The investigation further disclosed that the Respondent subsequently advised that it could not alter the convention, but offered a compromise measure (i.e. a recommendation by the Respondent's National Executive Council to the convention's Rules Committee that the Committee move that the delegates to the convention vote to adjourn the convention at 12:05 A.M. on September 24, 1976). You contend that such action and subsequent inaction on the part of the Respondent constitutes improper discrimination against the members of the Respondent labor organization, who observe the Jewish Holy Day of Rosh Hashanna, in violation of Section 19(b)(5) of the Order.

Section 19(b)(5) of the Order prohibits discrimination because of race, color, creed, sex, age or national origin with regard to the terms or conditions of membership in a labor organization (i.e. the standards of or prerequisites to membership).[2]

Section 18 of the Order guarantees labor organization member the right to equal (i.e. non-discrimination) treatment under the governing rules of a labor organization.[3]

Your complaint does not allege discrimination against an employee with regard to terms or conditions of membership which is proscribed by Section 19(b)(5) of the Order but rather some form of disparate treatment of members of the Respondent labor organization with regard to participation in the interal affairs of the Respondent labor organization which falls under the aegis of Section 18 of the Order. Since the matter you complain of is not actionable under Section 19 of the Order, I am dismissing the complaint in its entirety.[4]

---

[2] Section 19(b)(5) of the Order provides that "A labor organization shall not discriminate against an employee with regard to terms or conditions of membership, because of race, color, creed, sex, age, or national origin;" (emphasis added)

[3] Section 404.1 et seq. of the Regulations which implements Section 18 of the Order and incorporates certain provisions of the Labor-Management Reporting and Disclosure Act of 1959 (29 USC, 401 et seq) therein provides, in pertinent part, that "every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

[4] The Area Administrator of the Washington Area Office is currently processing as a violation of Section 18 of Executive Order 11491, as amended, in Case No. 22-07444(14) the factual allegations discussed herein.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and Respondent. A statement of service should accompany this request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business September 23, 1976.

Sincerely,

Kenneth R Evans

Kenneth L. Evans
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

February 28, 1977

846

Carol Haddad, National Field Representative
National Treasury Employees Union
1730 "K" Street, N.W. - Suite 1101
Washington, D.C. 20006

Re: Internal Revenue Service
Indianapolis, Indiana
Case No. 50-13135(CA)

Dear Ms. Haddad:

This is in regard to your letter of February 14, 1977, in which you request that the Assistant Secretary's dismissal (dated January 27, 1977) of your request for review on the ground that it was filed untimely be reconsidered.

I have reviewed the facts you relate regarding your attempts to have your request for review delivered to the Assistant Secretary before close of business on January 10, 1977. By your own admission, it was not delivered until 5:25 p.m. on January 10th, which is after close of business, and our records clearly show that it was stamped received on January 11th.

In my view, the matters set forth in your letter do not warrant reversal of the previous decision by the Assistant Secretary. Accordingly, your request for reconsideration is hereby denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

INTERNAL REVENUE SERVICE,
INDIANAPOLIS DISTRICT OFFICE,
INDIANAPOLIS, INDIANA,

Respondent

and Case No. 50-13135(CA)

NATIONAL TREASURY EMPLOYEES UNION, (NTEU)
AND NTEU CHAPTER 49,

Complainant

The complaint in the above-captioned case was filed on March 15, 1976, in the Office of the Chicago Area Administrator. It alleges a violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended. The complaint has been investigated and carefully considered. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the complaint has not been established, and I shall therefore dismiss in its entirety the complaint in this case.

It is alleged that the Respondent violated Sections 19(a)(1) and (6) of the Order by its failure to properly consult and confer with the Complainant relative to the introduction of a revised travel itinerary form for the use of certain unit employees (Estate and Gift Tax Attorneys) in the Indianapolis District of the Internal Revenue Service.

The initial charge in this matter was made on September 19, 1975, to the District Director. The basis of the charge is described as a refusal on the part of the Respondent to negotiate over the implemention of the above mentioned revised form.

It is the Respondent's position that the facts set forth in the complaint do not constitute an unfair labor practice under the Order because the Internal Revenue Service has no responsibility to confer and consult with the National Treasury Employees Union regarding the use of the Travel Itinerary Form itself, which it terms "a methods and means" of conducting its agency operations; and that the Complainant was afforded four separate opportunities to discuss the issue or submit proposals with respect to the possible impact on working conditions of the revised form prior to its final implementation.

Since the complaint does not raise questions relative to the nature of the revised form itself, no attempt will be made here to address that issue. The evidence shows that although the revised form was first introduced on May 30, 1975, the requirement for its mandatory usage was withdrawn on June 30, 1975, which is the first

date that the Respondent was put on notice by representatives of the Complainant that the revised form's introduction was being challenged. The Respondent subsequently solicited suggestions and recommendations from the Complainant on the use of the revised form in letters dated July 18, 1975 and August 28, 1975. Investigation reveals that the Complainant did not avail itself of either of these opportunities. The Respondent, however, did meet with the Complainant on November 11, 1975, subsequent to the filing of the pre-complaint charge, in an unsuccessful attempt at informal resolution of the issue.

The evidence, then, does not support a conclusion that there was a refusal to consult and confer with the exclusive representative on the part of the Respondent concerning this matter. At the first notification that exception was being taken to the introduction of the revised form, the Respondent issued instructions that the continued use of this form would be optional. Although the Complainant contends that the mandatory usage of this form was never rescinded, no evidence was submitted to substantiate this contention.

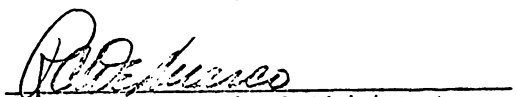
In a letter dated August 28, 1975, Respondent solicited Complainant's specific proposals for negotiation concerning the travel itinerary form. Complainant was informed in the letter that the proposals would be considered. On September 3, 1975, Complainai responded by letter informing Respondent that it considered preparing proposals to be a waste of time and energy and issued an ultimation demanding negotiations by September 18, 1975, or NTEU would consider the remedy available through the Department of Labor Under the circumstances of the instant case, it cannot be concluded that Respondent's position on the issue was so intransigent that Complainant could have reasonably believed its proposals would be disregarded. Further, the evidence suggests that, at all times material during the period from June 30, 1975, when the mandatory usage of the form was withdrawn to late September, 1975 when the form was implemented, Respondent expressed a willingness to negotiate regarding the impact of the use of the form but Complainant was not responsive to the opportunity.

Accordingly, I find no reasonable basis established by the Complainant for the finding of a violation in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business December 27, 1976.

Dated at Chicago, Illinois this 9th day of December, 1976.



R. C. DeMarco, Regional Administrator
United States Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

February 28, 1977

847

Al Halx, President
Lodge No. 81
International Association of
Machinists and Aerospace Workers
105 Sixteenth Avenue
East Moline, Illinois 61244

Re: Department of the Army
Rock Island Arsenal
Rock Island, Illinois
Case No. 50-13188(GA)

Dear Mr. Halx:

This is in regard to your mailgram of February 10, 1977, in which you in effect, request reconsideration of the Assistant Secretary's dismissal (dated January 27, 1977) of your request for review in the subject case on the ground that it was filed untimely.

I have reviewed the facts surrounding the dismissal of your request for review. As pointed out in the dismissal letter, your request for review was received subsequent to the date due. In fact, it was postmarked "PM, January 7, 1977", the date it was due. You now state that you did not receive the Acting Regional Administrator's decision until January 4, 1977. However, you did not mention this in your request for review; nor did you request an extension of time in which to file.

Under the foregoing circumstances, your request for reconsideration is hereby denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

DEPARTMENT OF THE ARMY,
ROCK ISLAND ARSENAL,
ROCK ISLAND, ILLINOIS,

Applicant

and Case No. 50-13188(GA)

LODGE NO. 81, INTERNATIONAL ASSOCIATION
OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Respondent

REPORT AND FINDINGS
ON
ARBITRABILITY

On October 7, 1976, Rock Island Arsenal, Rock Island, Illinois, filed an Application for Decision on Grievability or Arbitrability with the Chicago Area Administrator concerning a unit of its employees which is exclusively represented by Lodge No. 81, International Association of Machinists and Aerospace Workers (IAMAW). 1/ The collective bargaining agreement between the parties is the "Negotiated Agreement Between Rock Island Arsenal, Rock Island, Illinois, And International Association of Machinists And Aerospace Workers Arsenal Lodge No. 81," which remains in force for three (3) years from its effective date of April 20, 1976.

1/ Recognition was granted on March 25, 1964, under Executive Order 10988 to Lodge No. 81, IAMAW, as the exclusive representative for a unit of employees described as including "all non-supervisory Wage Grade employees employed at Rock Island Arsenal, and excluding "all Wage Grade, non-supervisory employees in the unit consisting of Trainee and Journeyman Toolmakers, Tool and Die Hardeners and Die Sinkers; all Wage Grade non-supervisory employees assigned to the unit consisting of the Central Heating Water Filtration and Air Compressor Plants of the Facilities Engineering Office; (and employees specifically excluded by provisions of Executive Order 11491, as amended, Section 10(b))." The parenthetical portion of the unit description was added after recognition was granted to achieve conformity with the Executive Order. In an Amendment of Recognition dated December 31, 1974 the Chicago Area Administrator (in Case No. 50-11135(AC)) ordered that "Rock Island Arsenal and the United States Army Communications Command Agency-Rock Island" be substituted for "Rock Island Arsenal" as the designation of the activity for the unit described above.

The issue before me in this matter is whether or not the Applicant's decision to shut down a portion of the Rock Island Arsenal during the period of December 24, 1976, to January 2, 1977, is arbitrable under the terms of the negotiated agreement.

Investigation reveals that after the Respondent requested a meeting on the above issue and the subsidiary issue of requiring the use of four (4) days annual leave by the affected employees in accordance with Article XXIII, a. Step 1 ("Union Dispute Procedure"), of the negotiated agreement, the parties met on August 9, 1976, but were unable to resolve their differences. In accordance with Article XXIII, b. Step 2, of the negotiated agreement, the Respondent submitted its position with respect to the above issues on August 16, 1976, and the Applicant submitted its position on August 19, 1976. In this statement the Applicant maintained that the decision to shut down a portion of the arsenal and require the usage of annual leave by affected employees was not arbitrable under the provisions of the negotiated agreement. A meeting between the parties was held on September 1, 1976, but the parties were still unable to resolve their differences. 2/ On September 9, 1976, the Respondent requested arbitration on only the "4 day shut down in December 1976" and so I shall limit my consideration to this issue.

It is appropriate to consider the sections of the negotiated agreement which the Applicant and the Respondent have determined to be pertinent. Article II ("Matters Appropriate For Meeting And Conferring") is a statement of general purpose regarding the obligation of activity management to meet and confer with the union on policies and programs affecting working conditions. Article III ("Rights Of The Employer") is basically a restatement of Section 12(b) of Executive Order 11491, as amended, which defines management's non-negotiable rights. Article XXII ("Employee Grievance Procedure") provides for " . . . the mutually satisfactory settlement of employee grievances involving the interpretation or application of this agreement," and it contains sections on policy, coverage, and procedure. Article XXIII provides that, "the following procedure will be followed in resolving disputes (differences of opinions concerning the interpretation and application of this Agreement) where no individual

2/ Article XXIII, b. Step 2 states (in part) that, "The parties will exchange their respective positions in writing . . . /within/ ten (10) working days from the date of the Step 1 meeting. Within five (5) working days from the date the written proposals are exchanged, the . . . /parties/ will meet to attempt to arrive at a satisfactory solution." In its August 19, 1976, response the Applicant refers to an oral agreement between the parties that the written position statement would be submitted after rather than prior to Step 2. Therefore, the September 1, 1976, meeting would appear to have been an additional attempt to resolve the dispute outside of the Article XXIII requirements.

employee grievance is involved." This article provides for the accelerated handling of union grievances which are of a general or institutional nature and do not involve a specific supervisor or employee. 3/ Article XXVI ("Existing Benefits and Understandings") is a statement of the obligation of activity management to meet and confer with the union before making changes in matters affecting working conditions.

Where, as here, the relevant Agreement dispute settlement procedure is limited to differences of opinions concerning the interpretation and application of the Agreement, it becomes necessary to closely examine all provisions in the negotiated Agreement to determine any reference to or arguable coverage of the matter requested by the Respondent for arbitration which has been stated specifically as "this is a request for arbitration on the 4-day shutdown in Dec. 76." A careful review of the Agreement reveals no such substantive provisions. The only Article at all arguably relevant to the issue of the shutdown is Article II which provides Respondent with the right to meet and confer with Applicant on certain policies and programs. However, the decision on the 4-day shutdown is a right reserved to management within the provisions of Section 12(b) of Executive Order 11491, as amended, and no obligation exists to negotiate concerning the decision itself.

Accordingly, having carefully considered the Application and all materials submitted by the parties in interest, I find that the matter of the 4-day shutdown in December of 1976 is not subject to arbitration under the existing Agreement between the Applicant and Respondent.

Pursuant to Section 205.6(b) and 202.6(d) of the Regulations of the Assistant Secretary, any party aggrieved by this action may obtain a review of this decision by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding, and a statement of service filed with the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the Assistant Secretary of Labor for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, LMSA, United States Department of Labor, 200 Constitution Avenue, N. W.,

3/ Article XXII and Article XXIII are both concerned with the "interpretation or application of the agreement" and would appear to be two (2) parts of the same grievance procedure rather than being separate and unrelated articles. The Article XXII sections on policy (a general statement concerning the rights of employees under the grievance procedure) and coverage (listing ten (10) issues, mainly personnel actions, which are excluded from the grievance procedure) are an extended definition of the application of the grievance procedure in a particular (employee related) context and their absence in Article XXIII should not be seen as either circumscribing or extending that article.

Washington, D. C. 20216, not later than the close of business January 7, 1977.

Dated at Chicago, Illinois, this 23rd day of December 1976.

LeRoy L. Bradwish
Acting Regional Administrator
United States Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3/1/77 848

Mr. Carmen J. Iodice
Regional Counsel of Customs
Region IX, U.S. Customs Service
U.S. Treasury Department
55 East Monroe Street - Suite 1501
Chicago, Illinois 60603

Re: National Treasury Employees Union
Washington, D.C.
Case No. 50-13183(CO)

Dear Mr. Iodice:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the above-captioned case, which alleges a violation of Section 19(b)(4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted inasmuch as a reasonable cause to believe that a violation occurred has not been established.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE TREASURY,
U. S. CUSTOMS SERVICE, CHICAGO REGION,
CHICAGO, ILLINOIS,

Complainant

and Case No. 50-13183(CO)

NATIONAL TREASURY EMPLOYEES UNION (NTEU),
WASHINGTON, D. C. AND NTEU CHAPTER 162,
OAK FOREST, ILLINOIS, AND NTEU JOINT COUNCIL
OF CUSTOMS CHAPTERS, WESTMONT, ILLINOIS,

Respondent

The Complaint in the above-captioned case was filed on September 30, 1976, in the Office of the Chicago Area Administrator. It alleges a violation of Section 19(b)(4) of Executive Order 11491, as amended. The Complaint has been investigated and carefully considered. The Complaint alleges in substance that the actions of four Customs employees in declining to use their personal vehicles constitute engaging in a prohibited work slowdown.

The Complainant submitted evidence showing a long history of the practice throughout the Customs Service and specifically in the Chicago Region of the use of privately-owned vehicles. Travel authorizations beginning as early as June 1962 were submitted with statistical computations showing that the extensive use of privately-owned vehicles in the performance of Customs employees' official duties was and is a substantial percentage compared to other alternate methods of transportation.

The investigation disclosed no basis in law or regulation that would require the use of privately-owned vehicles as a condition of employment in the performance of work assignments. Supervisors have been advised not to order or direct employees to use private vehicles in the performance of their work assignments. A review of the employees' position descriptions shows no requirement in the job duties for the use of a privately-owned vehicle in accomplishing the Complainant's work assignments. From the evidence submitted, it seems that the use of a privately-owned vehicle by Customs employees in carrying out their assignments is as much for the convenience for the employee as it is for the Government and is not a mandatory condition of employment. Further, the Complainant submits no convincing evidence to show that alternative means of transportation such as Government-owned vehicles, public transportation systems, rental automobiles and taxicabs, etc., will not adequately substitute for the use of privately-owned vehicles in carrying out work assignments involving mobility.

With respect to the four employees alluded to by Complainant in the Complaint in the instant case, it was not shown that the employees failed to carry out work assignments given by their supervisors on September 30, 1976, or on any subsequent date. The Complainant admits that its Acting District Director in Chicago, Mr. White, issued verbal instructions to his supervisors to the effect that work assignments would be made as usual, that no employee declining to use his privately owned vehicle was to be ordered or coerced into using it, that such employees were to be told to use public transportation, and if they encountered difficulty check with their supervisor before using taxicabs for their work assignments. It would appear from the directions given supervisors that the Complainant regards public transportation and taxicabs as adequate to carry out work assignments given Customs employees. Under the facts and circumstances, I find that the declination on the part of four Customs employees on September 30, 1976, to use their personally-owned vehicles was an option within their discretion and did not result in a slowdown perpetrated by the employees involved.

Having considered carefully all the facts and circumstances in this case, including the Complaint and all information supplied by the parties to the Complaint in this case, I find that a reasonable basis for the Complaint has not been established. Accordingly, having found no reasonable basis established by the Complainant for the finding of a violation in this matter, the Complaint in this case must be and hereby is dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor-Management Relations, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business October 29, 1976.

Dated at Chicago, Illinois this 14th day of October, 1976.

R. C. DeMarco, Regional Administrator
U. S. Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

849

March 2, 1977

Wiley Ward, President
American Federation of Government
Employees, Local 1857, AFL-CIO
5802 Watt Avenue
North Nighland, Calif. 95660

Re: McClellan AFB, California
Case No. 70-5101(CA)

Dear Mr. Ward:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on January 20, 1977. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on February 4, 1977. Your request for review postmarked on February 3, 1977, was received by the Assistant Secretary subsequent to the date due.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Jack A. Warshaw
Acting Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

REGIONAL OFFICE

ROOM 9061, FEDERAL BUILDING
450 GOLDEN GATE AVENUE, BOX 36017
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: 415-556-5915

January 20, 1977

Wiley Ward, President
AFGE Local 1857, AFL-CIO
5802 Watt Avenue
North Highlands, California 95660

Re: McClellan AFB and
AFGE Local 1857, AFL-CIO
Case No. 70-5101 (CA)

Dear Mr. Ward:

Pursuant to my letter of April 5, 1976, the above-referenced case, regarding an alleged Section 19(a)(1) and (6) violation of the Order by Respondent's denial of union representation at the Office of Special Investigation (OSI) meeting with a unit employee, was held in abeyance pending the issuance of the Federal Labor Relations Council major policy statement.

The Council's statement was to determine if an employee in a unit of exclusive recognition has a protected right under the Order to assistance (possibly including personal representation) by the exclusive representative in an interview or meeting with agency management.

The Council issued its policy statement, December 2, 1976 (copy attached). In its statement the Council reconfirmed that when summoned to a formal discussion regarding grievances, personnel policies and practices, or other matters affecting general working conditions of unit employees, a unit employee has a protected right under Section 10(e) of the Order to the assistance or representation of the exclusive representative. Regarding informal meetings, the Council stated:

> An employee in a unit of exclusive recognition does not have a protected right under the Order to assistance or representation at a nonformal investigative meeting or interview to which he is summoned by management; but such a right may be established through negotiation conducted by the exclusive representative and the agency in accordance with Section 11(a) of the Order.

Based upon investigation and careful consideration, it does not appear that further proceedings are warranted in the instant case.

The instant OSI-unit employee meeting cannot be considered within the context of a Section 10(e) formal meeting since the meeting did not concern a grievance, personnel policies or matters affecting general working conditions.

In addition, I do not find that the AFGE-McClellan Air Force Base collective bargaining agreement clearly provides the exclusive representative with a right to be present at the instant OSI-unit employee interview, since the meeting was investigatory in nature and was not part of a disciplinary action proceeding.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business February 4, 1977.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
3/25/77

Mr. Paul J. Hayes 850
President, Local R14-32
National Association of Government
Employees
P. O. Box 104
Fort Leonard Wood, Missouri 65473

Re: U. S. Army Training Center
Fort Leonard Wood, Missouri
Case No. 62-4846(GA)

Dear Mr. Hayes:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the Application For Decision On Grievability Or Arbitrability in the above-named case.

The evidence reveals that you filed the Application on April 20, 1976, although a final written rejection by the Activity of a request to proceed to arbitration had not yet been sought and received, inasmuch as arbitration was not invoked. Thus, in agreement with the Regional Administrator, I find that the instant application is procedurally defective as an application will not be processed by the Assistant Secretary until all the remedies in the parties' negotiated agreement have been exhausted. Therefore, as the parties' negotiated agreement herein provides for arbitration, arbitration must have been invoked and rejected in writing, which did not occur herein. In this connection, see Section 205.2(b) of the Assistant Secretary's Regulations and Report On A Ruling Nos. 56 and 61 (copies attached).

Under these circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the Application For Decision On Grievability Or Arbitrability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

August 27, 1976

In reply refer to: 62-4846(GA)
U. S. Army Training Center at
Fort Leonard Wood, Fort Leonard
Wood, Missouri/NAGE, Local R14-32

Mr. Paul J. Hayes
National Vice President
National Association of Government Employees
31 Holly Drive
Belleville, Illinois 62221

Dear Mr. Hayes:

Your Application for Decision on Grievability or Arbitrability filed pursuant to Executive Order 11491, as amended, on April 20, 1976, in the office of the St. Louis Area Administrator has been reviewed and considered carefully. The grievance, which is the subject of the application, pertains to Job Descriptions Number DA-201-5, Heavy Mobile equipment Repairer Foreman WS-5803-5, and Number DA-201-26, Automotive Repair Inspector Foreman WS-5823-09, at Fort Leonard Wood.

Section 205.2(b) of the Regulations of the Assistant Secretary provides that an application must be filed within 60 days after service on the Applicant of a final written rejection, expressly designated as such. Although in Major General John G. Waggener's letter of March 26, 1976 to Local R14-32 President Charles Sherrell it is stated that the letter constitutes "...a written rejection of your grievance as envisioned by Section 205.2...," I cannot agree that such a statement satisfies the requirements of Section 205.2 of the Regulations.

It is contemplated by the Executive Order that the parties exhaust all remedies available to them before bringing their misunderstandings and disagreements to the Assistant Secretary for decision and/or resolution. For this reason, Section 205.2 requires a final written rejection of the grievance. The investigation discloses that you have not attempted to exhaust the contractual remedies available; i.e., there has been no request that the matter be referred to arbitration. It is noted in this regard that Article 27, Arbitration, of the parties' agreement provides that under the circumstances present herein, the Union has the right to request such a referral. Under the particular circumstances present herein,

it is my view that in the absence of a request for arbitration and an ensuing refusal to so proceed by the Activity, there has not been a final rejection of the grievance as contemplated by Section 205.2 of the Assistant Secretary's Regulations.1/

Accordingly, I find that the Application has not been timely filed and it is therefore dismissed.2/

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other party to the agreement. A statement of service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216 not later than the close of business September 13, 1976.

Sincerely,

EDMUND L. BURKE
Acting Regional Administrator
Labor-Management Services

1/ The file reflects no indication by the Activity of any intent to refuse to submit the subject grievance to arbitration for resolution.

2/ In view of the decision reached herein, I am precluded from considering the merits of issue raised in the Application and, accordingly, I make no determination in that regard.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
3/25/77

851

Mr. Curtis Turner
National Representative
American Federation of Government
Employees, AFL-CIO
12th District
620 Contra Costa Boulevard - Suite 206
Pleasant Hill, California 94523

Re: Department of HEW
Social Security Administration
Quality Assurance Field Office
San Francisco, California
Case Nos. 70-5243(CU) and
70-5395(AC)

Dear Mr. Turner:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's Report And Findings On Petition For Clarification Of Unit And Petition For Amendment Of Certification in the above-named cases.

In agreement with the Regional Administrator, and based on his reasoning, I find that the certification may be amended and the unit clarified, as set forth by the Regional Administrator.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report And Findings On Petition For Clarification Of Unit And Petition For Amendment Of Certification, is denied and the subject cases are hereby remanded to the Regional Administrator, who is directed to issue the Clarification of Unit, and cause to be issued the Amendment of Certification, as he proposed to do in his Report and Findings.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HEALTH, EDUCATION & WELFARE SOCIAL SECURITY ADMINISTRATION QUALITY ASSURANCE FIELD STAFF SAN FRANCISCO REGION -ACTIVITY and PETITIONER and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1122, AFL-CIO -LABOR ORGANIZATION	Case No. 70-5243(CU) 70-5395(AC)

REPORT AND FINDINGS
ON
PETITION FOR CLARIFICATION OF UNIT AND
PETITION FOR AMENDMENT OF CERTIFICATION

Upon a petition for clarification of unit and a petition for amendment of certification filed in accordance with Section 202.2(c) of the Regulations of the Assistant Secretary, the Area Administrator, after posting of notices of petitions, has completed his investigation, and the undersigned hereby finds and concludes as follows:

The American Federation of Government Employees, Local 1122 (AFGE) is the current exclusive bargaining representative of the following unit, certified August 15, 1974, (Case No. 70-4286) under Executive Order 11491, as amended.

Included: All employees of the Social Security Administration, Bureau of Supplementary Security Income--Program Review Field Staff, San Francisco Region.

Excluded: Professionals, supervisors, guards, management officials and employees engaged in Federal personnel work in other than a clerical capacity.

The Activity seeks amendment of the certification to reflect the reorganization within the Social Security Administration in which the Program Review Field Staff was transferred from the Bureau of Supplementary Security Income to the Office of Management and Administration, and renamed the Quality Assurance Field Staff (QAFS). It is the Activity's position that this reorganization was administrative in nature and did not affect a change in the scope or character of the certified unit or alter unit employees' working conditions, personnel policies or practices, or supervision. The AFGE offers no objection to this amendment.

Through the Clarification of Unit petition, the Activity seeks clarification of the status of the Seattle Quality Assurance Regional Office (QARO) employees, maintaining that these employees are no longer within the existing bargaining unit due to a reorganization within the QAFS, which organizationally removed the Seattle employees from the San Francisco Region. The AFGE objects to the Clarification of Unit petition, arguing that the Seattle employees still appear to share a community of interest with San Francisco QARO employees and the number and location of Seattle employees has not been altered by the reorganization.

The Program Review Field Staff (PRFS) was established within the Bureau of Supplementary Security Income of the Social Security Administration, January 1, 1974, to review and monitor supplementary payments made to the blind, disabled and aged.

In administering the program for the western states, a San Francisco Regional Office was established with jurisdiction over the 14 states west of and including the Dakotas, Wyoming, Colorado and Arizona. The Regional Office in San Francisco received all of its administrative and personnel services from Region IX of HEW, even though its geographic jurisdiction extended into other regions of HEW 1/. In July, 1974, seven Field Offices, one of which was the Seattle Field Office, were established in the San Francisco PRFS Region; employees were permanently reassigned from the San Francisco Regional Office to these Field Offices. All seven Field Offices then reported to the San Francisco Regional Office, which was headed by a Program Review Officer. Region IX of HEW continued to service the employees at each of these offices.

In early 1975, the Program Review Field Staff was administratively transferred from the Bureau of Supplementary Security Income to the Office of Management and Administration, and was renamed the Quality Assurance Field Staff. It is this transfer of function which is the subject of the Amendment of Certification petition.

1/ Region IX of HEW is headquartered in San Francisco, and has jurisdiction over the states of California, Hawaii, Nevada and Arizona.

The number, classification and supervision of unit employees and the organizational structure of the Regions remained the same throughout the transfer. Thus, the reorganization was administrative in nature, did not raise a question as to representation, and did not result in a substantial change in working conditions.

Based upon these facts, and noting the agreement of the parties, the undersigned finds that the Amendment of Certification should be granted so that the certification reflects the proper name of the Activity pursuant to the reorganization.

On May 23, 1976, the Seattle Quality Assurance Field Office was officially established as the Seattle Quality Assurance Regional Office with jurisdiction over Washington, Oregon, Idaho and Alaska. As a result of the reorganization, the Seattle Quality Assurance Field Staff boundary complies with the boundary of HEW Region X, also headquartered in Seattle. All of Seattle's personnel records, which had been kept at HEW Region IX, and Seattle's financial records were transferred from San Francisco to Seattle. The Clarification of Unit petition concerns the result of this organizational realignment.

In establishing Seattle as a Regional Office, a Program Review Officer was appointed. This officer has the authority to negotiate agreements, as does his San Francisco QARO counterpart, who negotiated the dues withholding agreement with the AFGE. The Seattle Program Review Officer reviews and approves all Seattle employees' reports. Previously, all Seattle reports were sent to San Francisco for approval. Seattle employees are supervised and assigned work by their Seattle supervisors. Pursuant to the reorganization, Seattle employees have no contact with employees assigned to the San Francisco QARO, and there is no transfer of employees between Regional Offices. In establishing the Seattle QARO, the non-supervisory staff remained the same. Only a few managerial employees (e.g., Program Review Officer) were taken from the San Francisco QARO staff. The Seattle QARO receives no support, whether advisory or budgetary, from San Francisco QARO. The Seattle QARO receives authority, program direction and fiscal appropriations from the Headquarters Office of Management and Administration, Baltimore, Maryland, as does the San Francisco QARO. In addition, all servicing of Seattle employees is performed by Seattle QARO and Seattle HEW Region X. Seattle employees are now included under the HEW Region X Merit Promotion Plan.

In determining the effect of intra-Agency reorganizations on existing bargaining units, as typified in the instant Clarification of Unit petition, the Assistant Secretary, quoting the policy of the Federal Labor Relations Council, stated in Army and Air Force Exchange Service, South Texas Area Exchange, Lackland Air Force Base, Texas, A/SLMR No. 669, that one of three possibilities could occur:

It might be determined that the disputed employees remained in the existing unit; that they are no longer a part of the existing unit, and are therefore unrepresented; or that a "successorship" has been created by the reorganization within the criteria established in the Defense Supply Agency 2/ decision.

Regarding the instant case, the successorship alternative is not applicable since the instant reorganization did not involve the transfer of the entire unit, one criterion for successorship. The remaining alternatives are that the disputed employees, the Seattle QARO, either remained in the existing unit, or are no longer a part of that unit.

By conferring Regional Office status to the Seattle Field Office, Seattle was separated from the supervision and jurisdiction of the San Francisco QARO. The Seattle Program Review Officer's duties and responsibilities, including the authority to negotiate collective bargaining agreements, are the same as the San Francisco QARO Program Review Officer's. Seattle employees receive assignments from the Seattle Program Review Officer; their reports are reviewed and approved at the Seattle QARO level. Seattle receives all program guidance and instruction directly from the National Office of QAFS, as does the San Francisco QARO. As a result of the reorganization, HEW Region X provides all personnel services for the Seattle QARO employees, who are now under the HEW Region X Merit Promotion Plan. The Seattle employees have no more contact with the employees under the San Francisco QARO than with employees in any other region in the country.

Based upon these facts, the undersigned finds that the Seattle QARO employees no longer share a community of interest with the San Francisco QARO employees. Further, since the reorganization established the Seattle QARO as a separate entity, giving it the supervisory staff and bargaining authority that is equal to and completely independent of the San Francisco QARO's, it is difficult to see how maintenance of these employees within the currently certified unit would promote effective dealings and efficiency of agency operations. Accordingly, the undersigned finds that the Seattle QARO employees are no longer a part of the existing unit.

Having found that the certification may be amended, the parties are hereby advised that, absent the timely filing of a request for review of the Report and Findings, the undersigned intends to cause the Area Administrator to issue an Amendment of Certification, ordering that the designation of the Activity be changed to that of Quality Assurance Field Staff, San Francisco Region.

In addition, having found that employees of the Seattle Regional Office are no longer within the certified unit, the parties are advised hereby that, absent the timely filing of a request for review of this Report and Findings, the undersigned intends to issue a Clarification of Unit ordering that the employees of the Seattle Quality Assurance Regional Office be excluded from the unit exclusively represented by the AFGE, Local 1122.

Pursuant to Section 202.4(i) of the Regulations of the Assistant Secretary, a party may obtain a review of these findings and contemplated action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216. A copy of the request must be served on the undersigned Regional Administrator, as well as the other party. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and the reasons upon which it is based, and must be received by the assistant Secretary not later than the close of business

December 16, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Gordon M. Byrholdt

GORDON M. BYRHOLDT
Regional Administrator
San Francisco Region
Room 9061, Federal Building
450 Golden Gate Avenue
San Francisco, California 94102

2/ Defense Supply Agency, Defense Property Disposal Office, Aberdeen Proving Ground, Aberdeen, Maryland, FLRC No. 74A-22

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3/25/77 852

Mr. Kenneth J. Lazara
Chairman, U. S. Merchant Marine Academy,
Chapter UFCT
U. S. Merchant Marine Academy
Kings Point, New York 11024

Re: U. S. Merchant Marine Academy
Case No. 30-6787(CA)

Dear Mr. Lazara:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1), (2), (4) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that further proceedings in this matter are unwarranted. Thus, I find that the evidence submitted is insufficient to establish that a past practice was unilaterally changed by requiring the Complainant's representative to be in leave status, rather that on "official time," while in attendance at the hearing in question. In this connection, the evidence discloses that at two past hearings union representatives were not on "official time." Of those two instances, one involved a non-unit employee and such hearing was outside the scope of the Executive Order; and, although the other involved an unfair labor practice hearing and the union representative was not charged with annual leave, the evidence indicates that he had not requested prior approval to absent himself from his official duties to attend the hearing. In my view, the fact that in the latter instance remedial action was not taken, does not standing alone establish a "past practice."

Accordingly, and noting the absence of evidence of discriminatory motivation, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

August 9, 1976 In reply refer to Case No. 30-6787(CA)

Kenneth J. Lazara, Chairman
USMMA Chapter
United Federation of College Teachers
U.S. Merchant Marine Academy
Kings Point, New York 11024

Re: U.S. Merchant Marine Academy
Kings Point, New York

Dear Mr. Lazara:

The above captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. You contend that Respondent violated Sections 19(a)(1)(2)(4) and (6) of the Order when the Respondent failed to confer in good faith before unilaterally changing its past practice of granting official time to union representatives during an Unfair Labor Practice hearing and, in addition, threatened loss of annual leave and actually charged annual leave to this same union representative.

Evidence adduced discloses that Complainant requested an employee to serve as its representative at an Unfair Labor Practice hearing scheduled to begin on June 3, 1975. The hearing was held as scheduled and continued on June 4 and 5, 1975. The employee's work schedule was revised in order to permit the employee to represent Complainant at the hearing; however, Respondent advised the employee that time spent at the hearing as a representative of Complainant would not be covered by official time.1/

1/ Respondent did state that any employee called as a witness by the union would be granted official time. In addition, Respondent advised that it would permit the union to designate one observer who would be on official time; however, it could not be the person representing the union.

Kenneth J. Lazara, Chairman
USMMA Chapter, UFCT Case No. 30-6787(CA)

No evidence has been adduced that Respondent maintained a past practice of permitting employees to represent a union at an unfair labor practice hearing on official time, nor is there any evidence that Respondent refused or failed to meet with Respondent's representatives to discuss the official time issue. Moreover, no evidence has been adduced that Respondent's actions were motivated by animus or anti-union considerations.

Although an activity's failure to grant official time to witnesses testifying at a hearing after certain requirements have been met may constitute a violation of the Order, Respondent, per the Order, is not obligated to grant official time to employees during the time they are acting solely as a representative of a union at unfair labor practice hearings.2/

Accordingly, I conclude that Complainant has failed to sustain its burden of proof to establish that the Order may have been violated. I am, therefore, dismissing the complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business August 25, 1976.

Sincerely yours,

Joseph D. Breitbart

JOSEPH D. BREITBART
Acting Regional Administrator
New York Region

2/ U.S. Army Electronics Command, Fort Monmouth, New Jersey, A/SLMR No. 281.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
3/25/77

853

Mr. William E. Persina
Assistant Counsel, NTEU
1730 K Street, N. W. Suite 1101
Washington, D. C. 20006

Re: Internal Revenue Service
Milwaukee District, Wisconsin
Case No. 51-3506(CA)

Dear Mr. Persina:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances herein, I find that a reasonable basis for the Section 19(a)(1) and (6) allegations in the subject complaint has been established. Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in this matter, is granted, and the case is hereby remanded to the Regional Administrator, who is directed, absent settlement, to issue a notice of hearing.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
MILWAUKEE DISTRICT,
MILWAUKEE, WISCONSIN,

Respondent

and

CASE NO. 51-3506(CA)

NATIONAL TREASURY EMPLOYEES UNION
AND CHAPTER 01, NTEU,

Complainant

The Complaint in the above captioned case was filed in the Office of the Minneapolis Area Administrator April 30, 1976. It alleges violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended. The Complaint has been investigated and considered carefully. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for this Complaint has not been established, and I shall therefore dismiss the Complaint in its entirety.

Complainant is the exclusive representative of the unit of Respondent's employees at the Milwaukee District Office. This unit is covered by the Multi-District Agreement between the parties.

Complainant alleges that Respondent violated Sections 19(a)(1) and (6) when it refused to release to Complainant evaluation materials on an employee who was selected to be promoted. The Complaint was accompanied by a pre-Complaint charge filed November 5, 1975, alleging violations of Sections 19(a)(1) and (6). Respondent's final written decision was issued to Complainant April 12, 1976, denying the allegations.

Investigation reveals that on June 16, 1975, Respondent issued Promotion Certificate No. 152-75 for the position of Revenue Agent, GS-12. Only one of the five candidates on the certificate was designated as best qualified, and this candidate was selected for the promotion June 19, 1975. Subsequent to the selection, Complainant had been provided the Promotion Certificate and was notified of the cut-off score, 77.28, for the highly qualified/best qualified candidate. On July 7, 1975, one of the non-successful candidates filed a grievance concerning his non-selection. Complainant requested that all evaluation materials considered by the ranking panel be submitted to it, so that it could process this grievance. On September 18, 1975, Respondent released to Complainant pertinent sanitized evaluation material on all the unsuccessful candidates but withheld all material on the successful candidate, contending that it would be easily identified with the individual involved, and therefore would violate that individual's right to privacy.

On November 5, 1975, Complainant filed its pre-Complaint charge concerning Respondent's failure to release the information on the successful candidate. On November 11, Respondent's District Director regretted that the information had not been released originally, but stated that to release the information hence forth would obviously invade the privacy of the selected employee. The record does not explain how the activity could have released the pertinent information on the successful candidate without identifying him, since the Complainant already knew the cut-off score. However, the District Director continued, that since the grievant had ultimately been promoted, perhaps the question was now moot. On April 12, 1976, the Respondent issued its final written denial of the charges, and the subject Complaint is now before me.

It should be noted that only one individual from the original five eligible candidates was determined to be highly qualified, and he therefore became the best qualified candidate. It should also be noted that of the five eligible candidates in this proceeding, the grievant had been ranked fourth. The grievance occurring over the individual's non-selection, was carried to the fourth step, was denied, but Complainant failed to request arbitration. On October 10, 1975, additional selections were made for the position of Revenue Agent, GS-12, and the grievant was among those selected and his promotion became effective October 12, 1975.

However, the issue before me is not the merit of the decision of the panel, nor the merit of the non-selection of the grievant for the position for the position which he sought, but concerns itself with the Respondent's accuracy in withholding the evaluation material on the selected candidate. As noted above, Complainant had been advised that the cut-off score was 77.28. Upon Respondent's release of the pertinent information on all of the unsuccessful candidates, each candidate's total score was readily accessible to Complainant. As has been previously found, a labor organization's responsibility under Section 10(e) of the Order, for representing the interest of all employees in a unit cannot be met if it is prevented from obtaining relevant and necessary information in connection with the processing of grievances. 1/ Respondent in Department of Defense, State of New Jersey, raised as a defense that applicable laws and regulations, including policies set forth in the Federal Personnel Manual, precluded that Respondent from disclosing to the Complainant in the context of a grievance proceeding certain relevant and necessary documents. Also, in that case, that Complainant asserted that the information sought was necessary to properly process the member's grievance, to determine how the grievant's points compared with the candidates that were selected, whether the grievant's qualifications were considered, whether all six candidates were properly ranked in the best qualified category, and if the ranking procedures were properly carried out. In that case, as in this one, there was a dispute concerning the question of whether the candidates were properly ranked and certified, an inquiry into the nature of the panel's conclusion, and a review of whatever the panel relied upon in reaching its evaluation. However, unlike this case, that Respondent withheld all information relative to point scores, and further, unlike this case, there were six individuals involved, not just one individual.

1/ Department of Defense, State of New Jersey, A/SLMR No. 323.

On May 22, 1975, the Federal Labor Relations Council issued its decision on referral of a major policy issue from the Assistant Secretary wherein it found that applicable laws and regulations do not specifically preclude Respondent from disclosing to the grievant or his representative certain relevant and necessary information used by the Evaluation Panel provided the manner in which the information is made available protects the privacy of the employees involved by maintaining the confidentiality of the records containing such relevant information. 2/

As Respondent herein has indicated in its defense, and a point with which I find much merit, this case concerns the unique situation wherein only one individual was found best qualified. Since Complainant had already been made aware of the cut-off score, to release evaluation material concerning that one individual who was found to be the successful candidate would easily release that individual's identity to Complainant, the grievant, and to any other party who became familiar with the information. Therefore, I find that Respondent acted in accordance with the Federal Labor Relations Council's decision 73A-59 when it refused to release information concerning this one individual and in so refusing protected that individual's privacy as required by law and regulations. Had Complainant's request been in some manner which would not have singled out one individual, I feel that Respondent would have been compelled to release the information because in so doing the privacy of any one individual would have been protected by the group. 3/ However, in the instant case, since the Complainant was already aware of the successful cut-off score, I have been advised of no way of releasing information concerning the successful candidate which would not have violated that candidate's right to privacy.

Having carefully considered all the facts and circumstances in this case, including the charge, the Complaint and the information submitted by the parties, this Complaint is hereby dismissed in its entirety. Pursuant to Section 203.8(c) and Section 202.6(d) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based, and must be received by the Assistant Secretary for Labor Management Relations, Office of Federal Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N.W., Washington, D. C. 20216, not later than close of business October 6, 1976.

Dated at Chicago, Illinois, this 21st day of September, 1976.

Thomas J. Sheehan, Acting Regional Administr
U. S. Department of Labor, LMSA
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

2/ Department of Defense, State of New Jersey, A/SLMR No. 323, FLRC No. 73A-59, dated May 22, 1975.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
3/25/77 854

Mr. Charles H. Thomas
Acting Civilian Personnel Officer
United States Air Force
Scott Air Force Base
Belleville, Illinois 62225

Re: Department of the Air Force
Scott AFB, Illinois
Case No. 50-13087(GR)

Dear Mr. Thomas:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Grievability in the above-named case.

In your request for review you contend, among other things, that Elmendorf Air Force Base (Wildwood Air Force Station), FLRC 72A-10, does not require that the language contained in Article XX, Section 2, of the parties' negotiated agreement herein be rendered nugatory, as found by the Regional Administrator. I agree. Thus, under all the circumstances and contrary to the Regional Administrator, I find that the subject grievance is not on a matter subject to the negotiated grievance procedure. In my view, the Federal Labor Relations Council's decision in Elmendorf Air Force Base, cited above, did not preclude the parties from excluding from their negotiated grievance procedure matters, such as those at issue herein, which involve the interpretation of published Agency policies or regulations, provisions of law, or regulations of appropriate authorities, which, in fact, were excluded by Article XX, Section 2, of the parties' agreement. Moreover, it was noted that the Union herein did not seek to change such previously agreed upon language subsequent to the issuance of the Elmendorf decision.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Grievability, is granted.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

DEPARTMENT OF THE AIR FORCE,
SCOTT AIR FORCE BASE, ILLINOIS,

Respondent

and

Case No. 50-13087(GR)

LOCAL R7-23, NATIONAL ASSOCIATION
OF GOVERNMENT EMPLOYEES,

Applicant

REPORT AND FINDINGS ON GRIEVABILITY

On October 9, 1975, Local R7-23, National Association of Government Employees, the certified representative of a unit of all wage grade employees (except meatcutter employees) at Scott Air Force Base, Belleville, Illinois, filed an Application for Decision on Grievability (an amended Application was filed on April 26, 1976). The negotiated agreement between the parties is the "Labor-Management Agreement between Local R7-23, National Association of Government Employees and Scott Air Force Base, Illinois," which remains in force and effect for three years from its effective date of January 22, 1973.

The incident giving rise to the filing of the grievance was the work schedule posted by the activity on August 17, 1975, for certain personnel working in the C-9 section. On August 13, 1975, an informal meeting was held between the parties to resolve the matter. It was unsuccessful.

The Applicant maintains the posting of the work schedule was a violation of the Federal Personnel Manual (FPM), Section 990-1, and therefore subject to the grievance procedure. The Applicant states that Article VII, Section 1 incorporates the terms of the FPM in its statement "Hours of work will be as prescribed in appropriate regulations." Furthermore, it maintains that Article XX, Section 2 1/ is "without force and effect" since its inclusion was mandated by the Department of Defense. Therefore, the question before me is

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1/ Article XX, Section 2 reads as follows:

> Questions involving interpretation of published agency policies or regulations, provisions of law, or regulations of appropriate authorities outside the agency will not be subject to the negotiated grievance procedure or to arbitration regardless of whether such policies, laws, or regulations are quoted, cited, or otherwise incorporated or referenced in the agreement.

whether the regulations referenced in the negotiated agreement are thereby subject to the grievance procedure of the negotiated agreement.

The Respondent argues that the Applicant did not initially allege a violation of the negotiated agreement, but only the aforementioned FPM. The Respondent argues that these requirements of the FPM have been met. It further maintains that the grievance procedure relates exclusively to grievances under the interpretation or application of the agreement. The Respondent argues that although Article XX, Section 2 contains the same language as was found objectionable in American Federation of Government Employees, Local 1668, and Elmendorf Air Force Base (Wildwood Air Force Station) FLRC No. 72A-10, issued May 15, 1973, the Applicant has waived the right to challenge this section of the negotiated agreement since it has not done so at any time subsequent to the issuance of the Federal Labor Relations Council (FLRC) decision.

I find no merit to the argument of the Respondent that the Applicant, by not independently objecting to Article XX, Section 2 subsequent to the Council's decision in the Wildwood case has thereby accepted the language of this section of the negotiated agreement. I find that since the Council has previously determined this same language to be objectionable it is not necessary to again consider the matter. Therefore, I find Article XX, Section 2 to be irrelevant to these proceedings and the provisions of the Federal Personnel Manual regarding hours of work to be included by the general terms and scope of Article VII, Section 1.

Based upon the above, I find that the issue of assignment of hours of work to be grievable pursuant to Article VII, Section 1 of the negotiated agreement.

Pursuant to Section 205.6(b) and 202.6(d) of the Regulations of the Assistant Secretary, any party aggrieved by this action may obtain a review of this decision by filing a request for review with the Assistant Secretary with a copy served upon me and each of the parties to the proceeding, and a statement of service filed with the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the Assistant Secretary of Labor for Labor-Management Relations, LMSA, Attention: Office of Federal Labor-Management Relations, United States Department of Labor, 200 Constitution Avenue, N.W. 20216, not later than the close of business

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review, is not filed, the parties shall notify the Regional Administrator for Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith.

Dated at Chicago, Illinois this

R. C. DeMarco, Regional Administrator
U. S. Department of Labor
Labor-Management Services Administration
230 South Dearborn Street - Room 1033B
Chicago, Illinois 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3-25-77 855

Ms. Winifred L. Jones
President, American Federation
of Government Employees, AFL-CIO
Local 900
10524 Baron Drive
St. Louis, Missouri 63136

Re: Department of the Army
Reserve Components Personnel
and Administration Center
St. Louis, Missouri
Case No. 62-5217(CA)

Dear Ms. Jones:

This is in connection with your request for review seeking reversal of the Regional Administrator's dismissal of your complaint in the above-named case.

I find that your request for review is procedurally defective because it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on February 1, 1977. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on February 16, 1977.

Your letter dated February 14, 1977, addressed to the Regional Administrator, clearly asked that he reconsider his earlier dismissal of your complaint in the instant case. By letter dated February 17, 1977, he refused to reconsider his dismissal. By letter postmarked on February 24, 1977, you ask that your request for reconsideration be treated as a request for review. This request, however, was received by the Assistant Secretary subquent to the date due. Nor, while awaiting the Regional Administrator's decision on reconsideration, did you request an extension of time in which to file your request for review with the Assistant Secretary.

Accordingly, since your request for review was filed untimely, the merits of the subject case have not been considered, and your request

for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

February 1, 1977

Ms. Winifred L. Jones, President
American Federation of Government
Employees, AFL-CIO, Local 900
10524 Baron Drive
St. Louis, Missouri 63136

Re: 62-5217(CA)

Dear Ms. Jones:

The above-captioned case alleging violation of Section 19(a) (1) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted with regard to your complaint for reasons set forth hereinafter.

In your complaint you allege, essentially, that the U.S. Army Reserve Component Personnel and Administration Center unilaterally, without consultation or negotiation with Local 900, imposed a restriction upon the time allotted to you for union representational activities. You allege further that this restriction constitutes restraint and interference with respect to the unit members' choice of representative, that the restriction is a unilateral change "not in the spirit of the negotiated agreement," and that the restriction is itself an unfair labor practice. I must disagree on all three counts.

First, you have failed to show how the limitations placed upon your use of official time for representational duties restrained or interfered with the unit members' choice of representative. Even if such restraint or interference occurred, you have failed to show how this might be a violation of the Order.

Second, there is no reason to believe that limiting your official time for union duties constitutes a unilateral change in working conditions. Minutes of meetings between labor and management on January 8, 1976; February 12, 1976; April 8, 1976; May 20, 1976; and June 23, 1976 show that the controversial 25% restriction on the use of official time was in force and was discussed. Then President Richard Chapman was urged at least as long ago as the February 12, 1976 meeting, to submit a proposal on what constitutes a "reasonable" amount of official time for union duties. The meeting also included discussion of The Comptroller General

of the United States, Decision No. B-156287, February 23, 1976, suspended March 22, 1976, which attempted to establish guidelines on the appropriate use of official time for union duties. Thus the union was aware of the limitation and had ample opportunity to negotiate. See A/SLMR No. 733, Department of the Air Force, Headquarters Pacific Air Force, Department of Defense Dependent Schools, Pacific.

Third, the applicable collective bargaining agreement, Article X, Union Representation, provides that official time be utilized to perform representational activities "within reasonable limits." "Reasonable" is not defined and thus is subject to interpretation. The 25% limitation did not represent a change in the amount of official time previously allowed, it was not unilateral and did not blatantly breach the contract. In this regard see A/SLMR No. 726, Watervliet Arsenal, U.S. Army Armament Command, Watervliet, New York.

Finally, although the 25% limit was in effect, I note that a means for extending the limit was available to you, subject to approval, if you made a written request for same.

Thus, I find that you have failed to meet your burden of proof in establishing a reasonable basis for your complaint, and as a result you have failed to comply with Section 203.6(e) of the Regulations of the Assistant Secretary. Accordingly, I hereby dismiss your complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service must accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Office of Federal Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington D.C. 20216, not later than the close of business February 16, 1977.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

3/28/77 856

Mr. Paul J. Hayes
NAGE National Vice President
P. O. Box 104
Fort Leonard Wood, Missouri 65473

Re: U. S. Army Training Center
Fort Leonard Wood, Missouri
Case No. 62-4831(GA)

Dear Mr. Hayes:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the Application for decision on grievability or arbitrability in the above-named case.

The evidence reveals that you filed an Application for decision on grievability or arbitrability in the above-named case on April 6, 1976, although a final written rejection of the grievance by the Activity had not yet been sought and received, inasmuch as you filed such Application before proceeding to the final step of the negotiated grievance procedure and before arbitration was invoked. Thus, in agreement with the Regional Administrator, and based on his reasoning, I find that the instant Application is procedurally defective, as an Application will not be processed by the Assistant Secretary until after all steps of a negotiated procedure have been exhausted, and arbitration (where, as here, it is provided for in the parties' agreement) is invoked and rejected in writing. See, in this connection, Section 205.2(b) of the Assistant Secretary's Regulations and Report on a Ruling, Nos. 56 and 61 (copies attached).

Under these circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the Application for decision on grievability or arbitrability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

September 30, 1976

Re: 62-4831(GA), U. S. Army Training Center, Fort Leonard Wood, Missouri; and National Association of Government Employees, Local R14-32

Mr. Paul J. Hayes
National Vice-President
National Association of Government Employees
31 Holly Drive
Belleville, Illinois 62221

Dear Mr. Hayes:

Your Application for Decision on Grievability filed pursuant to Section 6(a)(5) of Executive Order 11491, as amended, on April 6, 1976, in the office of the St. Louis Area Administrator has been investigated and considered carefully. The grievance, which is the subject of the Application, was filed on March 15, 1976, and alleged that two employees of the U. S. Army Training Center Engineer and Fort Leonard Wood, Missouri (Activity), George A. Detherage and Buenaventura Sambrano had been misclassified for two and one-half years. The remedy requested in the grievance was that the two employees be promoted noncompetitively.

In the Application, it is stated that the final written rejection of the grievance was dated March 26, 1976. The Applicant appears to be referring to a copy of a "MEMORANDUM FOR RECORD" dated March 26, 1976, which was prepared pursuant to Article 26, Section 3(b) of the parties' negotiated agreement. 1/

In the Memorandum referenced, the Activity states, inter alia, that the grievance is not subject to the grievance procedure contained in the parties' agreement. The Activity bases its decision on a provision contained in Article 26, Section 1(a) of the agreement. 2/

1/ Article 26, GRIEVANCE PROCEDURE, Section 3(b), Step 2--Formal Grievance, reads in pertinent part, "In the event the grievance is not resolved through the chain of command, the appropriate director, major commander, or their designated representative will meet within five (5) workdays of the date the written grievance was submitted to the immediate supervisor.... A memorandum for the record of the discussion will be prepared by the appropriate management official, briefly summarizing the grievance, the consideration accorded it, the conclusions reached and the course of action decided on during the discussion. A copy of the memorandum will be furnished to all parties concerned within three (3) workdays of the date of the meeting(s)."

2/ Article 26, Section 1(a), reads, in pertinent part, "Any questions as to interpretation of published agency policies or regulations...shall not be subject to the negotiated grievance procedure regardless whether such policies, laws or regulations are quoted, cited or otherwise incorporated or referenced in the Agreement."

Subsequent to receiving the decision set forth in the March 26, 1976, memorandum, the Applicant chose to submit the question of grievability to the Assistant Secretary rather than pursuing it through the procedures contained in the parties' negotiated grievance procedure. In this regard, it is noted that Article 26, Section 3(c), contains Step 3 of the grievance procedure and provides that if an acceptable solution (to the grievance) is not reached as a result of the second step, that upon written request of the employee, the Commanding General or his designated representative shall meet with the aggrieved and/or his representative, and the concerned director in an attempt to resolve the grievance. It is provided further that the Commanding General will render a decision on the grievance and that should his decision be unsatisfactory, arbitration may be invoked by the Union in accordance with Article 27, Arbitration, of the parties' agreement.

Section 205.2(b) of the Regulations of the Assistant Secretary provides that an application must be filed within 60 days after service on the applicant of a final written rejection, expressly designated as such. Further, it is contemplated by the Order that the parties exhaust all remedies available to them before bringing their misunderstandings and disagreements to the Assistant Secretary for decision and/or resolution. For this reason, Section 205.2 of the Regulations requires a final written rejection of the grievance.

The investigation discloses, however, that you have not attempted to exhaust the contractual remedies available, i.e., there has been no appeal of the decision rendered in Step 2 of the grievance procedure to the Commanding General as provided for in Article 26, Section 3, of the negotiated agreement.

Under the particular circumstances herein, it is my view, that in the absence of an exhaustion of the grievance procedure available, there has not been a final rejection of the grievance as contemplated by Section 205.2 of the Assistant Secretary's Regulations. Accordingly, I find that the Application has not been filed timely and is, therefore, dismissed. 3/

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other party to the agreement. A statement of service must accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, United States Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business October 15, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator

3/ In view of the decision reached herein, I am precluded from considering the merits of the issue raised by the filing of the Application and, accordingly, I made no determination in that regard.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
3/28/77

857

Janet Cooper, Staff Attorney
National Federation of Federal
Employees
1016 16th Street
Washington, D. C. 20036

Re: Northern Division, Naval Facilities
Engineering Command
Philadelphia, Pa.
Case No. 20-5593(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 19(a)(2) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, I find that the evidence herein is insufficient to establish a reasonable basis for the instant complaint and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215 597-1134

September 29, 1976

Ms. Janet Cooper
Staff Attorney
National Federation of
Federal Employees
1016 Sixteenth Street, N.W.
Washington,D.C. 20036
(659516)

Re: Northern Division
Naval Facilities
Engineering Command
Case No. 20-5593(CA)

Dear Ms. Cooper:

The above-referenced case alleging violations of Section 19(a)(2) of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your complaint, filed on May 10, 1976,alleges that the Respondent violated Section 19(a)(2) of the Order by having a double standard of disciplinary action: one for bargaining unit employees and another, more lenient, system for supervisors. You contend that this practice of the Activity has discouraged membership in the labor organization.

Investigation has disclosed that there is a dispute between the parties as to whether this "double standard" exists. Even assuming, arguendo, that such a double standard does exist you have failed to show how this alleged discrimination was based on union activity in violation of Section 19(a)(2). The employee involved in the complaint was not a union officer, was not active on behalf of the union, and was not even a union member.

Therefore, in my view, you have not presented any evidence to establish a nexus between this alleged "double standard" and the employee's union activity. 1/

1/ U.S. Department of the Navy, Portsmouth Naval Shipyard, A/SLMR No. 445.

Accordingly, for the reason stated above and on the grounds that you have failed to establish a reasonable basis for the complaint which would warrant a hearing of this matter, I am dismissing your complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of this request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business October 14, 1976.

Sincerely,

Hilary M. Shéply
Acting Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
Office of the Assistant Secretary
Washington
3/29/77

858

Mr. William E. Persina
Staff Attorney
National Treasury Employees Union
and NTEU Chapter 010
1730 K Street, N. W. Suite 1101
Washington, D. C. 20006

Re: Department of Treasury, Internal Revenue Service, and IRS Chicago District
Case No. 50-13134(CA)

Dear Mr. Persina:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances herein, I find that a reasonable basis for the Section 19(a)(1) and (6) allegations in the subject complaint has been established.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the matter, is granted, and the instant case is hereby remanded to the Regional Administrator, who is directed, absent settlement, to issue a notice of hearing.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE (IRS) AND
IRS CHICAGO DISTRICT,
CHICAGO, ILLINOIS,

Respondent

and **Case No. 50-13134(CA)**

NATIONAL TREASURY EMPLOYEES UNION (NTEU)
AND NTEU, CHAPTER 010,

Complainant

The complaint in this proceeding was filed on March 12, 1976, in the Office of the Chicago Area Administrator. It alleges a violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended. The complaint has been investigated and carefully considered. It appears that further proceedings are not warranted, inasmuch as a reasonable basis for the complaint has not been established, and I shall therefore dismiss the complaint in its entirety in this case.

It is alleged that the Respondent violated Sections 19(a)(1) and (6) of the Order by its failure to allow a union representative to continue speaking at a formal meeting with unit employees.

Investigation reveals that the initial charge in this matter was made on September 9, 1975. The crux of the charge concerned the Respondent's failure to allow the Complainant's representative to continue speaking at a formal meeting that was conducted on June 13, 1975, in which the "Multiple Use" concept for utilizing floor space was discussed, thus falling within the ambit of Section 10(e) of the Order. 1/ It is the Respondent's position that the meeting was one of an informative nature rather than a grievance or negotiation session and, therefore, would not be a "formal discussion" within the meaning of Section 10(e) of the Order.

Investigation reveals that the meeting was one of an informative nature conducted by the Respondent. The Complainant's representative was allowed to speak at this meeting as long as his comments were informative rather than argumentative towards the Respondent.

1/ Section 10(e) reads: "The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit."

This meeting was not conducted for the purpose of grieving this concept or negotiating it. Therefore, the Respondent is under no obligation under Section 10(e) of the Order to allow the Complainant's representative to speak at this meeting.

Based upon the information provided, I find no reasonable basis established by the Complainant for the finding of a violation in this matter. Essentially, the Respondent has acted within its managerial authority in conducting a routine training-instructional session without allowing the Complainant's representative to speak at length as would be required if the meeting in question were equivalent to a formal discussion pursuant to Section 10(e) of the Order.

Having considered carefully all the facts and circumstances in this case, including the charge, the complaint and all information supplied in the accompanying Report of Investigation supplied by the Complainant, the complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business September 14, 1976.

Dated at Chicago, Illinois, this 30th day of August, 1976.

R. C. DeMarco, Regional Administrator
U. S. Department of Labor
Labor-Management Services Administration
230 South Dearborn Street, Room 1033B
Chicago, Illinois 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4/4/77 859

Mr. Edward S. Karalis
National Vice President
American Federation of
Government Employees, AFL-CIO
2nd District
300 Main Street
Orange, New Jersey 07050

Re: U. S. Customs Service
Region II, New York
Case No. 30-7232(RO)

Dear Mr. Karalis:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the objections to the election held in the above-named case filed by the American Federation of Government Employees, AFL-CIO, 2nd District.

In agreement with the Regional Administrator, and based on his reasoning, I find that the dismissal of the objections in this matter was warranted. Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Objections, is denied, and the Regional Administrator is directed to cause an appropriate certification to be issued.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. Customs Service
Region II
Activity

and

National Treasury Employees
Union (NTEU)
Petitioner

CASE NO. 30-07232(RO)

and

American Federation of Government
Employees, Region II Customs Council
AFL-CIO
Intervenor

REPORT AND FINDINGS

ON

OBJECTIONS

In accordance with the provisions of an Agreement for Consent Election approved on September 2, 1976, an election by secret mail ballot was conducted under the supervision of the Area Administrator, New York, New York. Ballots were mailed out on Friday, October 8, 1976. In order to be counted, they had to be returned to a designated Post Office Box no later than noon, October 22, 1976. The count was held the afternoon of October 22, 1976. The results of the election, as set forth in the Tally of Ballots are as follows:

Voting Group (a)

Approximate number of eligible voters	36
Void ballots	0
Votes cast for inclusion in the nonprofessional unit	16
Votes cast for a separate professional unit	5
Valid votes counted	21
Challenged ballots	0
Valid votes counted plus challenged ballots	21

Challenges are not sufficient in number to affect the results of the election.

A majority of valid votes counted plus challenged ballots has been cast for inclusion in the nonprofessional unit.

Voting Groups (a) and (b)

Approximate number of eligible voters	2560
Void ballots	31
Votes cast for National Treasury Employees Union (NTEU)	702
Votes cast for American Federation of Government Employees Region II Customs Counsil AFL-CIO	634
Votes cast against (exclusive recognition)	53
Valid votes counted	1479
Challenged ballots	1
Valid votes counted plus challenged ballots	1480

Challenges are not sufficient in number to affect the results of the election.

A majority of the valid votes counted plus challenged ballots has been cast for:

National Treasury Employees Union (NTEU)

Timely objections to conduct, improperly affecting the results of the election, and to the procedural conduct of the election were filed on October 27, 1976 by the American Federation of Government Employees, AFL-CIO, in behalf of the Intervenor, American Federation of Government Employees, Region II Customs Council, AFL-CIO. The objections are attached hereto as APPENDIX A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Administrator has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to each of the objections involved herein:

OBJECTION NO. 1

"The Petitioner circulated during the election a leaflet stating that:
'In letters to them, Fred W. Saunders, former AFGE Council President and now a GS-12 supervisor, wrote: "We currently have some fine representatives at JFK Airport and a complete staff at both the district and national levels and feel that we would be remiss if we did not represent all employees in this Region who need assistance. Therefore I must deny your request.'
"when in fact the letter quoted continued by reading:
'... and suggest you contact Mr. Harold Badaraco at 995-3345 for further assistance.'
"By leaving out such pertinent parts of the completed statement the Petitioner presented a continuing and lingering false impression in the minds of the voters

even though the leaflet was answered by the Petitioner (sic) (see enclosed). Such a false and misleading leaflet materially affected the results of the election and such election should be set aside."

Along with a letter dated November 8, 1976 amplifying its objections (attached hereto as APPENDIX B), the Intervenor enclosed a copy of the Petitioner's leaflet referred to above and entitled "Eight Years of AFGE Is Enough." Also enclosed were copies of two letters from Fred W. Saunders, former President of AFGE's Region II Customs Council, AFL-CIO. It is from there letters that the disputed paragraph is quoted. In these letters, Mr. Saunders is apparently replying to requests from two employees in the bargaining unit that they be allowed to be represented by NTEU, the Petitioner, on certain grievances that assumedly came within the orbit of the collective bargaining agreement negotiated by Customs Service Region II and the Intervenor. The requests were denied but the last sentence of the paragraph quoted by the NTEU in its leaflet was not quoted in full. It actually read:

"...Therefore I must deny your request and suggest you contact Mr. Harold Badaraco at 995-3345 for further assistance."

According to the Intervenor, the Petitioner's omissions "...presented a continuing and lingering false impression in the minds of the voters even though the leaflet was answered..."

Attached to its original letter of objections was a copy of the AFGE's answering leaflet entitled "NTEU Practices Deceit." In its reply the AFGE accused the NTEU of distorting the facts and published the full contents of the letters from Mr. Saunders, who because of a recent promotion to a supervisory position outside the bargaining unit could not publish his own rebuttal.

The NTEU leaflet "Eight Years of AFGE Is Enough" was distributed September 27 and 28, 1976. The AFGE's reply was issued no later than October 1, 1976.

Evidence adduced discloses that the NTEU's handbill was distributed at least ten days before the ballots were mailed and the AFGE's reply was issued at least a week before the mailing of ballots.

The Intervenor's objection in this regard is based solely on the omission from the NTEU's disputed leaflet of the words "...and suggest you contact Mr. Harold Badaraco at 995-3345 for further assistance."

The Assistant Secretary has previously held that elections will not be set aside where ample time is provided for an adequate rebuttal of an alleged misrepresentation of fact.1/

1/ The Department of the Army, Military Ocean Terminal, Bayonne, N.J., A/SLMR No. 177; also see Norfolk Naval Shipyard A/SLMR No. 31; Army Material Command, Army Tank Automotive Command, Warren, Michigan. A/SLMR No. 56; Army and Air Force Exchange Service, Fort Polk, Louisiana, A/SLMR No. 407.

The Intervenor had ample opportunity to respond to NTEU's disputed leaflet and actually made a timely response. I find nothing in the disputed leaflet which could not have been adequately responded to.

Based upon the foregoing, I conclude that no improper conduct occurred affecting the results of the election. Accordingly, Objection No. 1 is found to have no merit.

OBJECTION NO. 2

A. Background

Before considering the portion of the AFGE's objections relating to the mail balloting procedures, certain background information must be examined.

Customs Service Region II is one of nine Regions of the U.S. Customs Service. Its geographic boundaries include the eastern part of New York as far north as Albany, all of New York City and Long Island, Bermuda and parts of New Jersey. The bulk of the employees work within the New York City metropolitan area, at the U.S. Customshouse located at Six World Trade Center, New York, J.F. Kennedy Airport, Newark Airport and the New York Seaport. Altogether there are as many as 90 work locations. At most of these locations Notices of Election were posted on September 16 and 17, 1976. In a few instances postings did not take place until September 20, 1976. On September 16 and 22, 1976, Notices of Election were mailed individually to 81 Customs Warehouse Officers at their work locations because it is not customary for them to report to a central work location.

Each Notice of Election stated:

> "The election will be by mail ballot. Ballots are to be mailed out on Friday, October 8, 1976 and must be returned to the designated Post Office Box no later than noon, October 22, 1976 in order to be counted. Ballots arriving after that time will not be counted..."

When the consent election agreement was drawn up, it was recognized that some safeguard should be included against non-delivery of ballots to eligible employees or to any employee who thought he was eligible whose name may not have been included on the eligibility lists. The agreement provides:

> "Any eligible employee who does not receive a ballot by October 14, 1976 may notify Mr. Emil A. Grossi or Miss Pamela Bussen at (212) 466-4412 and request a duplicate ballot. A ballot and duplicate voting envelope so marked shall be sent to such employee at his request."

This provision was also included on the official Notice of Election posted and distributed as described above.

According to a November 19, 1976 letter submitted by the Activity in connection with the objections:

> "The source of the address list used for mailing ballots was a magnetic tape of names and addresses provided by the Internal Revenue Service (IRS) Data Center. This office services our payroll account. The tape provided name and address data for 1975 W-2 forms prepared for our employees. This list is updated annually....by employees in November, 1975."

On the day the ballots were mailed, the Petitioner questioned the accuracy of the address list used by the Activity. After the mailing, the Petitioner claimed that as many as 50 percent of the addresses were incorrect. The NTEU points out in its November 15, 1976 response to the objections that among other proposals it unsuccessfully urged that the date for returning ballots be extended. The Activity denied the high rate of error indicated by the Petitioner and made a spot review of the mailing list which indicated that the Petitioner's estimates were exaggerated.

In its November 19, 1976 response to the objections the Activity states:

> "During the mail balloting period, seven employees, including two substitutes in the Employee Management Relations Branch were designated to handle telephone requests for duplicate ballots. Each person recorded this information on a form... which included the date the call was received, the name of the employee calling, their home address, remarks and the date the duplicate ballot was mailed...."

In order to provide additional safeguards for the process of requesting duplicate ballots the Activity further states:

> "....To insure that employees were given an opportunity to request a duplicate ballot, all supervisors were advised by memorandum dated October 12, 1976...to insure that those employees desiring to contact the Employee Management Relations Branch for this purpose were permitted to do so during official duty hours and by government telephone...."

The Activity concludes that:

> "...No complaints were received regarding an employee's ability to telphone and/or to 'get through' to the designated telephone number."

B. Statement of Objections

In the original statement of objections dated October 26, 1976, AFGE's Joseph F. Girlando, Coordinator, 2nd District, makes the following protest with respect to the balloting procedures:

"...the mail balloting procedures were conducted in such a manner that more than a hundred voters were disenfranchised. About 23 eligible voters did not receive their ballots, prior to Wednesday, October 20, 1976 and therefore could not have cast them in order to be counted. Of the 2600 eligible voters, only 1,500 cast their ballots. More than 300 ballots were undeliverable and more than 100 voters called to request additional ballots.

"In addition to the 23 cited above, 47 did not receive the second correctly mailed ballot in sufficient time to cast a timely vote, thereby being disenfranchised." 2/

In a letter dated November 8, 1976, the AFGE elaborates upon its original statement of objections as follows:

"On November 5, 1976, the parties returned all late ballots from the Post Office designated for that purpose. There were seventy-five (75) such late or tardy ballots which may not have been received in a timely way from the Activity. Supporting such contention by the Intervenor-Objecting Party are fifty-five (55) affidavits of (64) eligible voters who were not permitted to cast a ballot or to cast a timely ballot because of the bad address utilized by the activity or poor U.S. Mail service. In addition, the Activity has in its possession thirty-five (35) undeliverable ballots because of incorrect or incomplete mailing addresses.

"Further, eleven (11) employees were on a temporary duty assignment for an extended period of time in the Washington, D.C. area and about sixteen to thirty (16/30) were engaged in an 'operation air-wave' that prevented them from receiving ballots at their normal mailing address -- their residence -- and no arrangement was made by the Activity to more properly forward such ballots to a working address of those away from their duty station. The Intervenor was not aware that there were any employees away from their duty stations which could have prevented them from receiving a ballot mailed to their residences." 3/

2/ See APPENDIX A.
3/ See APPENDIX B.

In further explanation of its objections, the AFGE wrote the following in a letter dated November 23, 1976:

"...

The Tally of Ballots which was issued on October 22, 1976 indicates 2,560 approximate number of eligible voters, of these eligible 1,479 cast valid ballots; a majority of 740 was required to secure certification and the Petitioner secured 792 valid votes.

"The Intervenor joins with the Petitioner's November 15th statement that 'The accuracy of the employee address list utilized for mail ballots in this election was initially raised by the Petitioner on October 8, 1976, the day the ballots were mailed.'

"Of the 2560 ballots mailed more than 300 were undeliverable, upon review of those incorrect address 35 remained undeliverable, the second time out.

"In my October 26th letter I referred to 23 eligible voters who did not receive their ballots prior to Wednesday, October 20, 1976. This figure offered at that time, has since increased to 64 who have offered written affidavits. The figure referenced in my October 26th letter of 47, has been established as 35, which were returned by the Post Office Department as undeliverable.

"In regard to the 23/64 figures; the 23 offered at the time was an approximation, the 64 is the final amount submitted.

"The 35/47 was also an approximation when offered (47) and then later found to be more accurate 35. A remaining figure shows that 75 cast ballots but were returned to the P.O. Box by November 5th too late to be counted. It is obvious that there could be a duplication to some extent." 4/

Apparently the figures originally cited by the AFGE in the letter of objections dated 10/26/76 were imprecise because they were limited to information available at that time from the Activity and various individual employees. The AFGE amplified its objections in two subsequent letters whose pertinent portions have been quoted above. A synthesis of these three letters indicates that the objections with respect to the mail balloting procedures may be summarized as follows:

4/ See APPENDIX C.

(1) More than 300 ballots were undeliverable; 35 remained undeliverable the second time out. (See Appendix C) As may be noted from the discussion below, under Item (1), the 35 ballots described as undeliverable the second time out are actually ballots that were returned as undeliverable after the count when it was too late to readdress them. Only ten were undeliverable after they were readdressed and remailed.

(2) The duplicate ballot procedure was invoked by more than 100 eligible voters. (See Appendix A)

(3) Seventy-fice (75) ballots arrived at the Post Office after the count. (See Appendix B)

(4) Eleven employees were disenfranchised because they were on temporary duty assignments for training. (See Appendix B)

(5) Certain employees were disenfranchised because they were assigned to "Operation Air Wave". (See Appendix B)

(6) More than 60 employees signed statements indicating they did not receive their ballots prior to October 20, 1976. (See Appendix B)

(7) Low proportion of eligible voters who cast ballots.

Each of these allegations is discussed below.

(1) Ballots returned by Post Office because of incorrect addresses

The objections mention the more than 300 ballots that were undeliverable. This number refers to the ballots that were returned by the Post Office because of incorrect addresses. The Activity has submitted a list of 295 employees whose original ballots were returned and remailed prior to the count. All these ballots were remailed with corrected addresses the same day they were returned by the Post Office except for three returned on 10/13/76, 10/14/76 and 10/18/76 respectively. These three were remailed the day following their return. Corrected addresses were obtained from the employee, his supervisor or from file maintained at central locations where the employees were assigned. A comparison of the remailed ballots with the voting lists shows the following:

Table I

Number of Persons on Eligibility Lists whose Ballots were returned by Post Office because of Incorrect Addresses and then Remailed by Activity prior to Tally.

	Total Number Remailed	Date Remailed	Number Who Voted	Number Who Did Not Vote
	27	10/12/76	14	13
	104	10/13/76	68	36
	92	10/14/76	46	46
	35	10/15/76	15	20
	16	10/18/76	6	10
	11	10/19/76	1	10
	10	10/20/76	0	10
Total	295*		150	145

*This total includes eight persons who requested duplicate ballots and are included in Table II. Five of these voted.

It should be noted that 150 or more than half of these so-called "undeliverable" ballots were returned after remailing in time to be counted. Furthermore, 258 of these ballots or more than 87 percent were remailed on October 15, 1976 or earlier in what appears to be sufficient time to have been received by the voters and returned in time for the count. More than 98 percent of the eligible voters were assigned to permanent duty stations within the New York-New Jersey metropolitan area so that it may be assumed that they live in areas within a two-day mailing radius. It is noteworthy that, of the 16 ballots remailed as late as 10/18/76, no fewer than six were returned in time for the tally. It would thus appear that even a late remailing date did not prevent employees from casting their ballots.

In support of its original objections, the AFGE states on November 8, 1976 that "the Activity has in its possession thirty-five (35) undeliverable ballots because of incorrect or incomplete mailing addresses." These are later referred to as ballots that were undeliverable the second time around. In reality, these are the ballots which for the most part were returned by the Post Office after the count and actually number 46. They have been grouped by the Activity on a list which it describes as "returned, not remailed and/or unaccounted for." 5/ Included in the 46 names are 11 to whom duplicate ballots were sent as per telephone requests. (See Table II below.) Five of these duplicate ballots were returned in time to be counted. The remaining 35 names in this group of 46 include two employees who could not be reached personally and whose addresses could not be ascertained from other sources. Also, ten of these ballots had been remailed at an earlier

5/ There were 38 names on the list originally compiled. Five names were added by the Activity in a letter dated 11/16/76 and three more in a letter dated 11/24/76.

date but were still undeliverable. (See Table I above.) If we eliminate the overlapping and duplications on the various lists maintained by the Activity, only 25 in this group have to be added to the 295 covered by Table I. Furthermore, the only ballots that appear to be truly "undeliverable" are the ten ballots that were readdressed and twice returned by the Post Office plus the two ballots addressed to employees whose correct addresses could not be determined.

(2) Duplicate ballots

The objections also refer to the more than 100 voters who called in for duplicate ballots in accordance with the procedure set up in the Consent Election agreement. The following analysis with respect to duplicate ballot requests has been made on the basis of information supplied by the Activity and a comparison of names with the voting lists. 6/

Table II

Number of Duplicate Ballots Mailed Upon Request and Number of Those Included in Tally

Total Number Duplicate Ballots Requested and Mailed	Date Duplicate Ballot Mailed*	Number Whose Ballots Were:	
		Returned & Counted	Not Returned
1**	10/12/76	--	1**
2	10/13/76	1	1
55	10/14/76	48	7
46	10/15/76	33	13
17	10/18/76	7	10
--	10/19/76	--	--
15	10/20/76	4	11
Total 136***		93	43

*Usually ballots were mailed on the same day they were requested. However, 19 ballots requested on 10/14/76 were not mailed until the next day and eight ballots requested on 10/19/76 were not mailed until 10/20/76.

**This employee requested and was mailed a ballot via the duplicate process but he actually was not eligible to vote.

***Eight of these are also included above in Table I. Five of these eight are in the group whose ballots were counted.

In examining these figures it is noted that duplicate ballots were requested by and mailed to 135 eligible voters, of whom 93 or 69 percent returned their ballots in time to be counted (103 of these ballots or more than 76 percent of them were mailed out on October 15, 1976 or earlier).

6/ These figures were compiled from two lists prepared by the Activity a list of duplicate ballots mailed and a supplementary list of duplicate ballots requested and assigned voting numbers in the 4000 series because the names could not be located on the numbered eligibility lists at the time of the telephone requests.

(3) Ballots picked up at Post Office on November 5, 1976

Reference is made to ballots that were picked up at the Post Office on November 5, 1976. On that date, representatives of each of the parties picked up ballot mailing envelopes that had accumulated in the designated Post Office box after the count on October 22, 1976. These ballots were delivered unopened to a representative of LMSA's New York Area Office. Although the AFGE refers to 75 ballots, there were only 73 in the packet because two non-related envelopes were included in error. An additional ballot was picked up November 24, 1976. Two of the ballot mailing envelopes may be removed from consideration because the outer envelopes bore no signatures so that the ballots within would not have been counted no matter when they arrived. In two other instances envelopes marked "Duplicate" were included in this group but it was found that the employees involved had voted their original ballots. An examination of the remaining 70 mailing envelopes showed that in eighteen instances they belonged to voters whose original ballots had to be readdressed. These employees have already been considered in Table I above. Names of 16 of the voters whose ballots were returned too late to be counted were included in the list of employees to whom duplicate ballots had been mailed as shown in Table II above. The names of the remaining 36 employees whose ballots arrived too late to be counted do not appear on either the duplicate list or the remailing list, nor did any of these employees furnish statements to the AFGE to the effect that they did not receive their ballots in time to vote.

(4) Employees on temporary duty assignment for training

The AFGE's November 8, 1976 letter cites the temporary duty assignment of eleven employees for an extended period of time in the Washington, D.C. area. The Activity has indicated that during the period from September 8, 1976 to October 21, 1976 eleven employees attended a Customs Inspector training course at the Customs Service Academy in Washington, D. C. This apparently was not known to the parties at the time the election arrangements were made. No provision was made to mail ballots to these employees other than to their normal home mailing addresses. Notices of Election were not posted until after these employees had left for the training assignment. It is possible that these employees may have returned home on a weekend during the voting period but an examination of the voting lists shows that not one of these employees voted. This group appears to have been disenfranchised.

(5) Employees engaged in "Operation Air Wave"

Reference is also made by the Intervenor to a group of about 16 to 30 employees "engaged in an 'operation air-wave' that prevented them from receiving ballots at their normal mailing address -- their residence -- and no arrangement was made by the Activity to forward such ballots to a working address of those away from their duty station...." The Activity has furnished the names of 13 employees in the voting units who were assigned to "Operation Air Wave" during the mail balloting period.

Management states, however, that "With the exception of those individuals assigned at Saratoga, N.Y., each employee was able to return to their residence at the end of the working day." All five of the eligible employees who were assigned to Saratoga did vote; of the remaining eight who were assigned to "Operation Air Wave", five did not vote.

(6) Non-Receipt of Ballots

The Intervenor states that its contentions are supported by affidavits of 64 eligible voters "....who were not permitted to cast a ballot or to cast a timely ballot because of the bad address utilized by the Activity or poor U. S. Mail service."

The AFGE actually submitted statement bearing 67 signatures. 1/

In checking these statements against the eligibility lists, it was found that three names were not listed at all and five were on the excluded lists. Of the remaining 59 employees who furnished statements, 49 said that they did not receive ballots. Only one of these says that he telephoned for a duplicate ballot and did not receive it. The record kept by the Activity shows that he did call and that a duplicate ballot was mailed to him on October 14, 1976. In six instances the lists kept by the Activity show that ballots were remailed to these employees because of incorrect addresses. In one instance, a remailed ballot was again returned. In three cases ballots were returned by the Post Office on October 22, 1976, too late to be readdressed.

The remaining ten persons who furnished statements said that they had received ballots but these ballots were received too late to be returned in time to vote. It is significant that only one in this group says that he telephoned for a duplicate ballot. He found out that his ballot had been sent to his parents' home where he formerly lived. The list of duplicate ballots shows that he did not request the duplicate until October 20, 1976; it was not received by him until October 22, 1976. One employee who furnished a statement saying that he had received his ballot too late because he was away at school has been included in the group discussed above in (3) "Employees on temporary duty assignment for training."

1/ One statement bore the names of two persons husband and wife - and appears to have been signed by the same person. For statistical purposes both have been included in this analysis.

(7) Proportion of Eligible Voters Who Cast Ballots

Finally, in the objections enumerated in the October 26, 1976 letter, the AFGE states that "Of the 2600 eligible voters, only 1500 cast their ballots." The Tally of Ballots show that 1511 or 59 percent of an approximate total of 2560 eligible voters returned their ballots in time for the count.

Summary and Analysis of Allegations in Objection No. 2

The gravamen of the objections filed by the AFGE with respect to the procedural conduct of the election is that voters may have been disenfranchised because of incorrect addresses in the mailing list. Evidence of the deficiencies in the mailing list is based on the more than 300 ballots that were returned by the Post Office because of incorrect addresses; the 135 requests from eligible voters for duplicate ballots; and the ballots that were returned too late to be counted. In any mail balloting it must be assumed that there will be address errors, particularly in one involving large numbers of voters. As a safeguard, the procedure for requesting duplicate ballots was included in the consent election agreement. Duplicate ballots were usually mailed out on the day there were requested.

Of the 135 eligible voters who requested duplicate ballots, 103 or 76 percent made the request by October 15, 1976, a week before the ballots were to be returned for the count. Sixty-nine percent or 93 of these voters returned their duplicate ballots in time to be counted.

Furthermore, without waiting for telephone requests for duplicate ballots, the Activity supplemented the system by promptly correcting and remailing ballots that were returned by the Post Office because of incorrect addresses. More than half these ballots that were returned by the Post Office before the count were remailed and sent back by the voters in time to be counted.

It should not be assumed that the voters whose ballots were misaddressed or whose ballots arrived too late to be counted were disenfranchised. The machinery for requesting duplicate ballots was extensively publicized and functioned effectively. The Notice of Election explicitly set forth the procedure for requesting a duplicate ballot in the event of non-receipt of the original ballot. Notices were posted at all work locations and where necessary were mailed to individuals at their assigned work locations. Posting of the notices started more than three weeks before the election.

Each of the unions in its campaign literature publicized the procedure for requesting duplicate ballots. The Petitioner, in a response to the objections, has stated:

> "In addition to official Department of Labor notification, the Petitioner, on two occasions, September 29, 1976 and October 12, 1976, distributed three thousand leaflets

throughout the Region informing employees of the procedures to be followed to obtain a duplicate ballot....Furthermore, a similar leaflet was distributed by the Intervenor during the week of October 11, 1976."

Copies of the leaflets have been examined and they do indeed urge the use of the procedure for requesting a duplicate ballot. The AFGE leaflet, distributed on October 13, 1976, described the procedure in almost half-inch high letters.

The Petitioner also avers that the procedure for requesting duplicate ballots was emphasized in some of its campaign meetings which were attended by large numbers of voters.

In order to guarantee the efficacy of the procedure, the Activity on October 12, 1976 sent a memorandum to all its supervisors in which the procedure was explained. Supervisors were instructed to allow the employees to use official time and government telephones for the purpose of requesting duplicate ballots.

In its response to the objections, the Activity comments that its preparations for handling requests for duplicate ballots included the assignment of seven persons to the task of answering the telephones. The observation is made that "No complaints were received regarding an employee's ability to telephone and/or to 'get-through' to the designated telephone number." Significantly, the AFGE has not supplied evidence to support a conclusion that the system for requesting duplicate ballots was inadequate. In the statements furnished by the AFGE, only one employee said that he had requested a duplicate ballot but did not receive it. One employee who said he received it too late to vote did not request the ballot until October 20, 1976.

The bulk of the ballots that were misaddressed were corrected and remailed in time to be voted; the machinery for requesting duplicate ballots was adequately publicized and functioned effectively. The decision to use or not to use this machinery was determined by the free and untrammeled choice of the voters. Although it is conceivable that in some cases remailed or duplicate ballots reached eligible voters too late to be of use, it is noted that duplicate ballots were not requested by most of those who did not vote, nor were their ballots returned because of incorrect mailing addresses. We must assume, therefore, that their ballots were received but as a matter of choice were not marked and returned. As an extra precaution and in order to insure prompt handling by the Post Office, every mailing envelope bore a stamp or notation reading "First Class Mail" in addition to the printed frank.

In ruling on a Request for Review of a dismissal of objections in a case in which only 80 out of 214 eligible employees voted, the Assistant Secretary upheld the Regional Administrator's determination that there was no merit to the objection because no evidence was furnished that eligible

voters were prevented from exercising their voting rights.[8] In other cases, the Assistant Secretary refused to set aside elections in the absence of a showing that an election was not properly publicized or that unusual circumstances were present.[9]

Under all of the circumstances it does not appear that eligible voters were disenfranchised or prevented from voting because of the errors in mailing addresses. The system for requesting duplicate ballots was available as a counter-balance and functioned efficiently when the voter chose to use it.

In view of the foregoing, it is found that the objections are without merit as they relate to the numbers of misaddressed ballots and requests for duplicates.

The AFGE also claims that certain employees who were assigned to "Operation Air Wave" were prevented from voting. The evidence presented

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3. Department of the Air Force, Moody Air Force Base, Georgia, Ruling on Request for Review No. 131

9. U.S. Public Health Service Hospital, DHEW, San Francisco, California, Ruling on Request for Review No. 195; Department of the Navy, Naval Ship Repair Facility, Guam, Mariana Islands, Request for Review No. 198

earlier in this report shows that eight of the 13 employees involved in this program cast their ballots; there were no circumstances which would have prevented the remaining five from voting if they so chose.

The only group of voters who appear to have been disenfranchised as contended by the AFGE are the eleven employees who were on a training assignment in Washington, D.C. from September 8, 1976 until October 22, 1976. They left their permanent duty station before the Notices of Election were posted and were presumably not at home to receive their ballots. But even if all of them had voted for the Intervenor, the results of the election would not have been affected.

Finally, the AFGE states that "Of the 2600 eligible voters, only 1,500 cast their ballots.." Actually the Tally of Ballots shows that 1511 or 59 percent of the approximate total of 2560 voters returned their ballots in time for the count. (The AFGE in its November 23, 1976 letter refers to the number of valid ballots returned but we are concerned with the number of ballots returned in time for the count, valid or not.)

In a landmark decision which applies the theory of public elections to an election involving the choice of a union for purposes of exclusive recognition, the Supreme Court found that:

> "Majority of votes cast at election participated in by majority of eligible voters...held sufficient to determine representative for collective bargaining under Railway Labor Act, even though such majority of votes cast did not constitute majority of all those eligible to vote." 10/

This principle has been upheld in many subsequent decisions by lower courts in cases involving decisions of the National Labor Relations Board. For instance, it has been emphasized -

> "....that where an election to choose a bargaining representative is fairly advertised and held and the result is fairly representative of the employee's wishes, the political principle of 'majority rule' applies, viz., that those not participating in the election must be presumed to assent to the expressed will of the majority of those voting, so that such majority determines the choice, irrespective of whether a majority of the employees participated." 11/

10/ Virginian Railway Co. v. System Federation No. 40, 1937, 300 U.S. 515,560, 57 S. Ct. 592,605.

11/ N.L.R.B. v. Standard Lime & Stone Co., 149 F. 2d435, certiorari denied 66 S. Ct. 28, 326 U.S. 723.

The validity of a determination based on the majority choice of those voting has been carried even further by the courts. It has been found that even where there is a slender majority of those voting who do not constitute a majority of employees in the bargaining unit, certification is justified. 12/ The courts have held that even where an election was carried by a majority of a minority, the validity of the election was not affected. 13/

Except for the eleven employees detailed to a Washington training assignment whose votes would not have affected the results of the election, the evidence does not indicate that those voters who wanted to participate in the election were barred from doing so because of the procedural conduct of the election. The consent election agreement included a procedure for requesting duplicate ballots which was designed to act as a safety valve. If this procedure had been utilized, it would have served to correct any deficiencies in the address lists. More than a majority of the eligible employees cast their ballots and the Petitioner won by a substantial margin. I find that the election was fairly conducted and that Objection No. 2 is without merit with respect to the procedural conduct of the election and the proportion of eligible voters who cast their ballots.

Having found that no objectionable conduct occurred, improperly affecting the results of the election, the parties are advised hereby that a Certification of Representative in behalf of the National Treasury Employees Union (NTEU) will be issued by the Area Administrator absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, ATTN: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of such service should accompany the request for review.

12/ C.C.A. 2 1941 Marlin Rockwell Corp. v. N.L.R.B., 116 F.2d586, certiorari denied 61 S. Ct. 1116, 313 U.S. 594; C.C.A. 5 1940 N.L.R.B. v. Whittier Mills Co. 111 F. 2d.

13/ N.L.R.B. v. Central Dispensary & Emergency Hospital 145 2d852, 79 U.S. App. D.C. 274, certiorari denied 65 S. Ct. 684, 324 U.S. 847.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business January 6, 1977.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: December 21, 1976

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

Attach.

GPO 916-186

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/4/77 860

Mr. James R. Rosa
Staff Counsel
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Avenue, N. W.
Washington, D. C. 20005

Re: U. S. Immigration and Naturalization
Service, Eastern Regional Office
Case No. 31-9914(CA)

Dear Mr. Rosa:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges a violation of Section 19(a)(6) and (1) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in this matter are unwarranted. While the Complainant filed a timely pre-complaint charge, it did not file the instant complaint until March 15, 1976, more than nine months after the issuance of the memorandum that constituted the alleged unfair labor practice. Thus, I find that the instant complaint does not meet the timeliness requirements set forth in Section 203.2(b)(3) of the Assistant Secretary's Regulations.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

September 13, 1976 In reply refer to Case No. 31-9914(CA)

Richard L. Bevans, Vice President
National Border Patrol Council
2169 Watts Drive
Ransomville, New York 14131

Re: U.S. Immigration & Naturalization Service
Eastern Regional Office

Dear Mr. Bevans:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as the complaint has not been timely filed in accordance with Section 203.2 of the Regulations of the Assistant Secretary.

The complaint alleges Respondent violated Section 19(a)(6) of the Order by directing a unilateral change in personnel policies, practices and working conditions by the issuance of a memorandum dated June 12, 1975 without affording Complainant an opportunity to bargain. You contend that the above cited memorandum first came to your attention on June 17, 1975.

Evidence adduced discloses the charge filed on December 10, 1975 was timely filed within the six months after the issuance of the memorandum; however, the complaint filed on March 15, 1976 was not filed within nine months of the issuance of the memorandum although it was filed within nine months of the date you became aware of the event.

The alleged incident which forms the basis for the complaint is the issuance of the memorandum which effectuated the unilateral change. Since the alleged act occurred in excess of nine months prior to the filing of the complaint, I conclude that the complaint has been untimely filed. The time limits set forth in Section 203.2 of the Regulations start to toll from the occurrence of the

alleged unfair labor practice and not from the date the charging party had knowledge of the unfair labor practice.1/

In view of my disposition of this matter, I find it unnecessary to comment on the merits of the case.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business September 29, 1976.

Sincerely yours,

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

1/ Assistant Secretary Request for Review decision No. 208.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4-14-77

861

Mr. Harold Roof
4th Vice President
American Federation of
Government Employees, AFL-CIO
1-J-21 Operations Building
6401 Security Boulevard
Baltimore, Maryland 21235

Re: Department of HEW
Social Security Administration
Baltimore, Maryland
Case No. 22-6905(AP)

Dear Mr. Roof:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability and Arbitrability in the above-named case.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that the instant grievance is subject to a statutory appeal procedure. Thus, the matter involved is not grievable or arbitrable under the parties' negotiated grievance/arbitration procedures.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability and Arbitrability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,
SOCIAL SECURITY ADMINISTRATION

Activity

and Case No. 22-6905(AP)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES,
LOCAL 1923, AFL-CIO

Labor Organization/Applicant

REPORT AND FINDINGS

ON

GRIEVABILITY AND ARBITRABILITY

Upon an application for a decision on grievability or arbitrability filed under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of the matter has been conducted by the Area Administrator.

Under all of the circumstances, including the positions of the parties, I find and conclude as follows:

A collective bargaining agreement was negotiated between the parties and became effective on or about September 24, 1974. This agreement is to remain in effect until July 1, 1977 and will be reviewed for successive one-year periods thereafter unless either party notifies the other of an intention to amend, modify or terminate the agreement. On or about February 5, 1976, employee George Rutledge filed a grievance with the Activity alleging that he had been assigned the duties and has continually performed the duties of a GS-13 SSI Policy Specialist without receiving proper pay or recognition since March 1973 when he was detailed, and subsequently reassigned, to a new position. The Activity's actions were allegedly in violation of Article 15, Section A; Article 15, (E)(1)(2) and (4); Article 17 (A)(6); and Article 17(C)(1)(2) and (3) of the negotiated agreement.

The grievance was denied on February 10, 1976. A second stage grievance was filed on February 17, 1976 and on February 26, 1976, the grievance was forwarded by the second stage deciding official to the Director of the Personnel Division as he had the authority to grant the relief requested.

On March 11, 1976, the Director of the Personnel Division denied the grievance on the grounds that a statutory appeal procedure precluded the matter from consideration under the negotiated procedure.

Subsequent to a denial of the grievance by the third stage deciding official, the Union requested arbitration on the grievance on April 12, 1976. On April 26, 1976, the Activity denied the Union's request on the grounds that a statutory appeal procedure precluded the consideration of the grievance under the negotiated grievance procedure.

In its application filed in the Washington Area Office on June 11, 1976, the Union contends that Article 17, Section C, Subsection 2 of the agreement is germane to the grievance and that the grievance is, therefore, arbitrable.

Article 17, Section C, Subsection 2 reads, in part, as follows:

> Details are intended only for meeting temporary needs of the Agency's work program when necessary services cannot be obtained by other desirable or practicable means. The Administration is responsible for keeping details within the shortest practicable time limits and assuring that the details do not compromise the open-competitive principle of the merit system or the principles of job education. Except for brief periods, employees should not be detailed to perform work of a higher grade level unless there are compelling reasons for doing so. Normally, the employee should be given a temporary promotion instead.

The Union argues that the issue raised by the grievance is that the greivant is being paid less for performing the same duties as other employees who are paid at a higher grade and as such does not involve the classification appeal process.

The Activity's position is that the appropriate recourse for the employee is through a statutory appeal procedure. Only in this forum, the Activity contends,can a determination be made on the accuracy of the Activity's classification of the employee's job at the GS-12 level.

In my view, the central issue in the grievance is whether the position to which the employee was detailed and subsequenlty reassigned is properly classified at a GS-12 level. The proper forum for resolution of this issue is

is governed by statute (5 USC 5112) and, pursuant to the requirements of Section 13 of Executive Order 11491, as amended, the employee's request for relief must be pursued under the prescribed statutory appeal procedure rather than the negotiated grievance procedure of the parties' collective bargaining agreement. Accordingly, I find that the grievant's claim is appealable under the statutory appeal procedure provided for classification matters and, consequently,may not be raised under the parties negotiated grievance and arbitration procedure.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of the action by filing a request for review with the Assistant Secretary of Labor for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. A copy of this request for review must be served on the undersigned Acting Regional Administrator as well as the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business October 21, 1976.

Dated: October 6, 1976

Eugene M. Levine,Acting Regional Administrator
for Labor-Management Services

Philadelphia Region

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/11/77

D. A. Dresser, Acting Director
Labor and Employee Relations Division
Department of the Army
Office of the Deputy Chief
of Staff for Personnel
Washington, D. C. 20310

862

Re: U. S. Army Aviation Center
Fort Rucker, Alabama
Case No. 40-7491(AC)

Dear Mr. Dresser:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report And Findings On Petition For Amendment Of Certification in the above-named case.

In agreement with the Acting Regional Administrator, I find that as Local 784, Laborers' International Union of North America, AFL-CIO, followed and met the standards outlined in Veterans Administration Hospital, Montrose, New York, A/SLMR No. 470, the designation of the exclusive representative of the subject exclusive unit may be changed to: Laborers' International Union of North America, Local 784, AFL-CIO. With regard to your objections to the amendment, I find that the dismissal of the petition for amendment of certification in Case No. 40-6690(AC) and the revoking by the Laborers' International Union of North America, AFL-CIO, of Local 1054's charter did not nullify Local 1054's exclusive representative status of the subject unit. Thus, no real question concerning representation has been raised with regard to such unit. It should be noted in this regard that the purpose and intent of a petition for amendment of certification is to provide a vehicle to change the designation of an exclusive representative or agency. It is not a vehicle to nullify a properly established exclusive unit.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report And Findings On Petition For Amendment Of Certification, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U. S. ARMY AVIATION CENTER
FORT RUCKER, ALABAMA

Activity

and

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 784, AFL-CIO

Petitioner

Case No. 40-7491(AC)

REPORT AND FINDINGS
ON
PETITION FOR AMENDMENT OF CERTIFICATION

Upon a petition for amendment of certification filed in accordance with Section 202.2(c) of the Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

Laborers' International Union of North America, Local 1054, AFL-CIO, (hereinafter referred to as Local 1054) was certified on November 27, 1970, as the exclusive representative of all employees of the Non-Appropriated Fund Activities, U. S. Army Aviation Center, Fort Rucker, Alabama, excluding managers, assistant managers, supervisors, professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity, guards, employees of the Army and Air Force Exchange, intermittent and temporary employees. 1/

Petitioner proposes to amend the certification by changing the name of the certified labor organization from Local 1054, Laborers' International Union of North America, AFL-CIO, to Local 784 of LIUNA (hereinafter referred to as Local 784).

Upon request of the Area Administrator, the Activity posted copies of Notice to Employees in places where notices are normally posted affecting the employees in the unit involved setting forth the proposed amendment.

On November 6, 1975, Petitioner sought the identical change of name of the exclusive representative as it is now seeking. 2/ The Regional Administrator issued a Report and Findings on January 20, 1976, in which he found that a change in affiliation from Local 1054 to Local 784 did not take place in accordance with the standards required by the Assistant Secretary. The Assistant Secretary denied the Petitioner's request for review on April 23, 1976.

The Activity objects to the granting of the amendment predicated on the fact that the petition filed on November 6, 1975, was dismissed and the Regional Administrator's decision was sustained. Furthermore, in a letter dated May 17, 1976, the Regional Administrator stated that the employees in that unit had no current exclusive representative. 3/

Investigation discloses that Local 1054 is the exclusive representative of approximately 70 of the 125 employees of the Activity, and also is the exclusive representative of approximately 70 of the 150 employees at the Army and Air Force Exchange Service, Fort Rucker, Alabama. 4/ The private sector employer in Cuthbert, Georgia, formerly represented by Local 1054 has renegotiated its contract with Local 784.

Local 1054 by letter dated June 28, 1976, supports granting the proposed amendment.

On June 4, 1976, Local 1054 sent letters to all members notifying them that a special meeting would be held on June 23, 1976, at the I.A.M. Hall, Daleville, Alabama, at which time a secret ballot election would be held. The letter noted the importance of the meeting and that it was for the express purpose of voting on the merger question.

At the meeting of June 23, 1976, an election by secret ballot was conducted. The result of the vote was 33 votes cast for the merger and none against.

The standards which the Assistant Secretary states must be met in order to assure that any change in affiliation accurately reflects the desires of the membership and that no question concerning representation exists are found in Veterans Administration Hospital, Montrose, New York, A/SLMR No. 470, and are as follows: (1) A proposed change in affiliation should be the subject of a special meeting of the members of the incumbent labor organization, called for this purpose only, with adequate advance notice provided to the entire membership; (2) the meeting should take place at a time and place convenient to all members; (3) adequate time for discussion of the proposed change should be provided, with all members given an opportunity to raise questions within bounds of normal parliamentary procedure; and (4) a vote by the members of the incumbent labor organization on the question should be taken by secret ballot, with the ballot clearly stating the change proposed and the choices inherent therein.

With respect to Step No. (1) the proposed merger was the sole subject of a special meeting. With respect to Step No. (2) I find that the meeting was held at a convenient time and place. With respect to Step No. (3) there is no evidence that the membership was not afforded full opportunity to discuss the merger question within the bounds of normal parliamentary procedure. With respect to Step No. (4) the members voted by secret ballot with the ballot clearly explaining the choices. Based on the above, I find that the procedure utilized accurately reflects the desires of the membership.

With respect to the Activity's objections which are based upon the Assistant Secretary's having, in effect, sustained the prior Report and Findings and the Regional Administrator's comments concerning the status of Local 1054, subsequent to the prior Report and Findings and the May 17, 1976, letter the Petitioner took steps leading to affiliation as set forth above. The circumstances, therefore, which warranted the earlier findings no longer exist.

Based on this finding that the standards required by the Assistant Secretary were met in the meeting of June 23, 1976, I find that the requested Amendment of Certification may be granted.

Having found that the recognition may be amended, the parties are hereby advised that, absent the timely filing of a request for review of the Report and Findings the undersigned intends to cause the Area Administrator to issue an Amendment of Certification, ordering that the designation of the exclusive representative be changed to: Laborers' International Union of North America, Local 784, AFL-CIO.

Pursuant to Section 202.4(i) of the Regulations of the Assistant Secretary, a party may obtain a review of the finding and contemplated action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned as well as the other parties. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business November 15, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Dated: October 29, 1976

WILLIAM D. SEXTON
Acting Regional Administrator
Atlanta Region

Attachment:
LMSA 1139, Service Sheet

1/ Case No. 40-2262(RO)
2/ Case No. 40-6690(AC)
3/ The letter was in response to an inquiry from the Activity concerning the status of Local 784 and Local 1054. The letter noted that Local 1054, having had its charter revoked, was no longer in existence.
4/ As compared with these figures at the time when the Report and Findings was issued in Case No. 40-6690(AC) the petitioner was the exclusive representative of approximately 205 of the employees of the Activity and was also the exclusive representative of approximately 210 of the employees of the Army and Air Force Exchange Service, Fort Rucker, Alabama.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/11/77

863

Mr. Steven P. Flig
Assistant Counsel
National Treasury Employees Union
1730 K Street, N. W.
Suite 1101
Washington, D. C. 20006

Re: Internal Revenue Service
Atlanta District Office
Case No. 40-07435(CA)

Dear Mr. Flig:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that there is insufficient evidence to establish a reasonable basis for your allegation that the Respondent's memorandum entitled, "Employee's Responsibility in Timekeeping," effectuated a unilateral change in personnel policies. However, in regard to your other allegation concerning the Respondent's alleged failure to afford the Complainant an opportunity to be represented at a formal discussion, I find, contrary to the Regional Administrator, that a reasonable basis for the complaint exists.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint with regard to the "Timekeeping" memo, is denied. The remaining allegation of the complaint /i.e., with regard to whether the November 13, 1975, meeting was a formal discussion within the meaning of Section 10(e) of the Order/ is hereby remanded to the Regional Administrator, who is directed to reinstate that portion of the complaint, and, absent settlement, to issue a notice of hearing.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300
ATLANTA, GEORGIA 30309

August 31, 1976

Mr. Steven P. Flig
Assistant Counsel
National Treasury Employees Union
and NTEU Chapter 26
Suite 1101 - 1730 K Street, NW
Washington, D. C. 20006

Re: Internal Revenue Service
and IRS Atlanta District Office
Case No. 40-07435(CA)

Dear Mr. Flig:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

You allege that Respondent violated Section 19(a)(1) and (6) of the Order on November 13, 1975, by refusing to allow a union steward to attend a group meeting in Columbia, South Carolina, and by issuing a memorandum entitled "Employee's Responsibilities in Timekeeping" at that meeting. You contend first that the meeting was a formal discussion within the meaning of Section 10(e) of the Order and second that the memorandum had the effect of unilaterally changing an established personnel practice regarding annual leave. I shall treat the allegations separately, addressing the latter first.

Investigation establishes that Chapter 26 is the exclusive representative of approximately 700 employees of the Internal Revenue Service (IRS) Atlanta District Office, including those employees in the Employee Plans and Exempt Organizations (EP/EO) group located in Columbia. On or about November 11, 1975, Group Manager Evelyn Waugh, located in Atlanta, notified the EP/EO employees that a group meeting would be held the following day. The meeting was rescheduled for November 13, and on that day Waugh convened a meeting of the five EP/EO specialists, a clerical employee, and herself.

Prior to the meeting steward Wayne Golden requested permission to attend. Waugh told Golden that the meeting would not concern personnel policies or practices or matters affecting the working conditions of the employees, and refused Golden's request. Subsequently, Waugh addressed the employees on approximately 41 topics, among them, the Privacy Act, new "ERISA" legislation, and recent IRS policy decisions. The meeting lasted

approximately one and a half hours.

One topic concerned employee health plans, and a memorandum entitled "Open Season for Health Benefits" was distributed. The memorandum was a routine announcement of the employees' opportunity to change their medical plans. The other memoranda were distributed. One, titled "Restoration of Annual Leave" detailed the circumstances under which excess annual leave might be "carried over" into the new year. The other, titled, "Employee's Responsibilities in Timekeeping" outlined agency policy regarding use of annual. That memorandum indicated that the advanced approval of the group manager was necessary in order for an employee to take leave.

The Complainant contends that, due to the separation of EP/EO employees from their group manager, the policy requiring advanced approval for leave had not been strictly enforced, and that the practice had been for employees taking leave to simply notify their timekeeper. Thus, the Complainant alleges that the leave practice was being altered by the "Employees' Responsibilities..." memorandum, without he benefit of consultation with the employees' representative.

Respondent contends that the memorandum on advanced approval for leave is merely a restatement of established agency policy and the "only unilateral change was that effectuated by certain employees when they strayed from the established policy for taking leave".

The Complainant has failed to submit evidence to support its assertion that any of the memoranda effectuated a change in personnel policies. The Respondent's assertion that the memorandum merely reiterates established policy is uncontroverted by the evidence at hand.

Inasmuch as the Complainant has submitted insufficient evidence to support its allegation of a unilateral change in personnel policies or practices, it has failed to bear the required burden of proof. There is therefore, no reasonable basis for that part of the complaint based on such an allegation.

I therefore find no basis for that portion of the complaint alleging that Respondent unilaterally effected a unilateral change in personnel policies or practices.

As to the other issue, i.e., whether the representative of the exclusive representative was entitled to be afforded an opportunity to be present at the November 13, 1975, meeting, it is undisputed that no pending grievance was discussed during the meeting. Most of the meeting was devoted to matters other than personnel policies or practices.

Those matters which were of concern to employees' personnel practices, i.e., restoration of annual leave and timekeeping procedures, were not newly established policies or procedures. No new personnel policies having been announced or effected at the November 13, 1975, meeting, the meeting was not a formal discussion within the meaning of Section 10(e) of the Order. Accordingly, Respondent was not required to afford the exclusive representative an opportunity to be present at the meeting.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention, Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business September 15, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services
Administration

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4/11/77 864

Mrs. Addie B. Valadez
President, American Federation of
Government Employees, AFL-CIO
Local 2154
Wainwright Station
P. O. Box 8241
San Antonio, Texas 78208

Re: U. S. Department of Army
Fort Sam Houston, Texas
Case No. 63-6962(CA)

Dear Mrs. Valadez:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above captioned case, which alleges violations of Section 19(a)(1) and (3) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Regional Administrator, that the evidence is insufficient to establish a reasonable basis for the instant complaint and that, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

October 13, 1976

In reply refer to: 63-6962(CA)
Defense/Army, Fort Sam Houston,
Fort Sam Houston, Texas/AFGE,
AFL-CIO, Local Union 2154

Mrs. Addie B. Valadez, President
AFGE, AFL-CIO
Local Union 2154
637 East Park
San Antonio, Texas 78212

Certified Mail #746764

Dear Mrs. Valdez:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant.

In this regard, you have offered no evidence that Messages and Key Notes, number 9-76, dated June 21, 1976, was purposely posted or distributed generally to rank and file Local Union 2154 unit employees. Nor have you supplied any evidence to support your assertion of the falsity of the statements contained in this internal management informational publication.

Based upon all the foregoing, I hereby dismiss the complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by

the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Attention: Office of Federal Labor Management Relations, 200 Constitution Avenue, N. W., Washington, D. C. 20210, not later than close of business

Sincerely,

Gordon E. Brewer

for CULLEN P. KEOUGH
Regional Administrator for
Labor-Management Services Administration

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210
4/11/77

865

Mrs. Addie B. Valadez
President, American Federation of
Government Employees, AFL-CIO, Local 2154
Wainwright Station
P.O. Box 8241
San Antonio, Texas 78208

Re: U.S. Department of Army
Fort Sam Houston, Texas
Case No. 63-6963(CA)

Dear Mrs. Valadez:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that the instant complaint is procedurally defective in that it was filed untimely. Thus, the alleged unfair labor practice occurred in August 1975, more than six months prior to the date the pre-complaint charge in this matter was filed, and more than nine months prior to the date the subject complaint was filed. Under these circumstances, I find that the pre-complaint charge and the complaint herein did not meet the timeliness requirements of Sections 203.2(a)(2) and 203.2(b)(3), respectively, of the Assistant Secretary's Regulations.

Accordingly, the merits of the subject case have not been considered and your request for review, seeking reversal of the Regional Administrator's decision dismissing the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/11/77

866

Mr. James J. Sharkey
1022 Washington Avenue
Lewisburg, Pa. 17837

Re: U. S. Justice Department
Bureau of Prisons
Lewisburg Penitentiary, Pa.
Case No. 20-5623(CA)

Dear Mr. Sharkey:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted. In this regard, it is noted additionally that allegations which are raised for the first time in a complaint that have not been raised previously in the pre-complaint charge will not be considered by the Assistant Secretary. See Report On A Ruling No. 16 (copy attached).

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

(Certified Mail No. 659513)

October 4, 1976

Mr. James J. Sharkey
1022 Washington Avenue
Lewisburg, Pa. 19837

Re: U.S. Dept. of Justice
Bureau of Prisons
Lewisburg Penitentiary
Case No. 20-5623(CA)

Dear Mr. Sharkey:

The above-captioned case alleging violations of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended, has been investigated and carefully considered. It does not appear that further proceedings are warranted inasmuch as you have not established a reasonable basis for your complaint.

Your amended complaint, filed on July 14, 1976, alleges that the Respondent violated the Order by way of a series of discriminatory actions taken against you in reprisal for your activities as President of Local 148, American Federation of Government Employees. You maintain that the Respondent failed to promote you, disciplined you, and subsequently terminated you due to your union activity, and that the Activity failed to consult, confer or negotiate with you "on numerous occasions".

Inasmuch as your letter of charges of March 19, 1976 cited only allegations involving your termination, my findings are limited to that issue, which, in my view, is the gravamen of your complaint. 1/

Investigation has disclosed that you have raised the issue of your termination before the Federal Employee Appeals Authority and that body has considered the question of your union activity in your appeal.

Section 19(d) of the Order provides that an issue which can properly be raised under an appeals procedure may not be raised under Section 19. In at least two cases, the Assistant Secretary has ruled that unfair labor practice complaints should be dismissed where the affected employees could appeal their adverse action discharge to the Civil Service Commission. 2/

1/ See Section 203.2(b)(2) of the Assistant Secretary's Rules and Regulations.
2/ See Tennessee Valley Authority, A/SLMR No. 509, and U.S. Dept. of Agriculture Regional Office, Juneau, Alaska, A/SLMR No. 595.

Inasmuch as the issue of your discharge as reprisal for union activity can properly be raised under an appeals procedure (which you have, in fact, utilized) I am dismissing your complaint on the grounds that Section 19(d) precludes your filing subject complaint with the Assistant Secretary for Labor-Management Relations.

Pursuant to Section 203.7(c)of the Rules and Regulations of the Assistant Secretary for Labor-Management Relations, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such action must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. 20216 not later than close of business October 19, 1976.

Sincerely,

Kenneth L Evans

Kenneth L. Evans
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/11/77

867

Mr. Peter Hayes
President, Local 3343
American Federation of Government
Employees, AFL-CIO
287 Genesee Street
Utica, New York 13501

Re: Social Security Administration
Bureau of Field Operations
Glens Falls District Office
Glens Falls, New York
Case No. 35-4086(CA)

Dear Mr. Hayes:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of your complaint, which alleges violations of Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis for the instant complaint has not been established and, consequently, further proceedings in this matter are unwarranted.

The evidence reveals that the matter concerning the failure to negotiate over the selection of a training instructor was made the basis of a grievance filed on April 28, 1976. Thus, Section 19(d) of the Order precludes the raising of the same matter under the unfair labor practice procedures. See Department of Navy, Vallejo, California, A/SLMR No. 570. Regarding the issue of the alleged failure to bargain with the Complainant as to the selection of a training site, I note that the Complainant had been informed of that decision in early April 1976. Thereafter, written confirmation of the same was received by the Complainant from the Respondent on April 27, 1976, and at no time did the Complainant request to negotiate on the matter. Cf. U.S. Department of Air Force, Norton Air Force Base, A/SLMR No. 261.

Under these circumstances, and noting the absence of evidence that the Respondent's conduct was based on anti-union considerations, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

October 19, 1976 In reply refer to Case No. 35-4086(CA)

Peter Hayes, President
Local Union 3343, AFGE, AFL-CIO
287 Genesee Street
Utica, New York 13501

Re: Social Security Administration, New York Region Bureau of Field Operations

Dear Mr. Hayes:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. You contend that Respondent violated Sections 19(a)(2) and (6) of the Order when it failed to inform and consult with the on-site representative concerning the selection and use of its office as a training site and the selection of the instructors for the training. In this respect, you contend that Respondent's actions were in violation of its obligations pursuant to Article V, Section 1 and Article XXVII, Section 2 of the Agreement.

Evidence adduced discloses that Complainant, on April 28, 1976, filed a grievance on behalf of several employees contending that Respondent had violated Article XXVII, Sections 1 and 2 of the Agreement. The grievance states, in part:

> "... It also seems apparent that the procedures outlined in Section 2 of the "Details" article were completely ignored. While I can sympathize with your lack of understanding of the new agreement, I believe that a loose interpretation would have called for, at the bare minimum, full and open communication with your office staff and prior consultation with the on-site representative. ... As a remedy to this grievance, I am

Peter Hayes, President
Local Union 3343, AFGE, AFL-CIO Case No. 35-4086(CA)

I am, therefore, dismissing the entire complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business November 4, 1976.

Sincerely yours,

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/11/77

868

Mr. Robert W. Crittenden
Director of Personnel
Community Services Administration
1200 19th Street, N. W.
Washington, D. C. 20506

Re: Community Services Administration
Washington, D. C.
Case No. 22-6839(AP)

Dear Mr. Crittenden:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Grievability or Arbitrability in the above-named case.

I agree with the Regional Administrator that although certain alleged conduct, such as that involved herein, may be subject to further proceedings under a Federal criminal statute, the availability of such a forum is not necessarily a bar to administrative action on the matter herein. However, I disagree that the conduct involved in this case is subject to the parties' negotiated grievance procedure.

The issue raised by the Union in its March 3, 1976, grievance (whether an Activity witness lied during an arbitration hearing) involves the conduct of a particular arbitration proceeding. There is no showing that the matter involved herein is a question of contract interpretation or application. The only provision of the agreement with respect to arbitration hearings, Article 17, Section 4, incorporates Sections 771.210 and 771. 211 of the Civil Service Commission's Regulations, which provide generally for the procedures that shall be followed in arbitration, and that testimony shall be under oath. However, authority over the entire conduct of such hearings is left to the arbitrator. Whatever attack can be made upon the testimony of a witness, in my opinion, can be made only during the hearing itself before the arbitrator or after the hearing on exceptions filed with the Federal Labor Relations Council.

In sum, therefore, I view the Union's grievance herein as, in effect, a collateral attack upon the procedure of a

prior arbitration hearing, as distinguished from raising an issue of contract interpretation or application. Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Grievability or Arbitrability, is hereby granted.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

COMMUNITY SERVICES ADMINISTRATION

Activity/Applicant

and

Case No. 22-6839(AP)

NATIONAL COUNCIL OF CSA LOCALS, AFGE, AFL-CIO

Labor Organization

REPORT AND FINDINGS
ON
GRIEVABILITY OR ARBITRABILITY

Upon an Application for Decision on Grievability or Arbitrability having been filed in accordance with Section 205 of the Regulations of the Assistant Secretary, 1/ the undersigned has completed the investigation and finds as follows.

A collective bargaining agreement was negotiated between the parties and became effective on or about March 31, 1972. It was to remain in effect until April 15, 1973 and was automatically renewable for one-year periods thereafter. On September 11, 1973, a number of amendments to the contract were agreed to.

On or about March 3, 1976, a grievance was filed by the Union contending that the Activity had violated the agreement when its agent Carlos Ruiz allegedly lied while testifying at an arbitration hearing held pursuant to Article 17 of the parties' agreement. On or about March 17, 1976, the Activity rejected the grievance as not being proper subject matter to be grieved under the negotiated grievance procedure. By letter dated March 21, 1976, the Union invoked arbitration in the matter. By letter dated March 30, 1976, the Activity issued a final rejection of the grievance. The instant application was filed on May 11, 1976. The unresolved question is whether a grievance alleging that a party lied in testimony at an arbitration hearing is subject to the negotiated grievance procedure.

The following portions of the contract are relevant.

1/ Despite the Labor Organization's arbument to the contrary, I find that pursuant to Section 205.1 of the Regulations of the Assistant Secretary, the Activity does have standing to file the instant application.

Article 2. Employees Rights (In Part)

Section 2. The parties agree that they will proceed in accordance with and abide by all Federal laws, applicable state laws, regulations of the Employer and this agreement, in matters relating to the employment of employees covered by this agreement.

Article 16. Grievance Procedure (In Part)

Section 1. The purpose of this article is to provide for a mutually acceptable method for the prompt and equitable settlement of grievances over the interpretation or application of this Agreement. This negotiated procedure shall be the exclusive procedure available to the Union and the employees in the bargaining unit for resolving such grievances. The only matters excluded from this negotiated grievance procedure are those matters for which appeals procedures are specified in statute or regulations or interpretation of regulations by appropriate authorities, such as the Civil Service Commission, Office of Management and Budget, General Accounting Office or General Services Administration.

Article 17. Arbitration

Section 1. If the Employer and the Union fail to settle any grievance processed under the negotiated grievance procedure, in accordance with Article 16, Section 8 or 11, and if the election is made to refer the matter to binding arbitration, the request will be made within 30 days of the decision of the appropriate party.

Section 2. Within 5 working days from the date of the request for arbitration, the parties shall jointly request the Federal Mediation and Conciliation Service to provide a list of 5 impartial persons qualified to act as arbitrators. The parties shall meet within 3 working days after the receipt of such list. If they cannot mutually agree upon one of the listed arbitrators, the Employer and the Union will each strike one arbitrator's name from the list of 5 and will then repeat this procedure. The remaining person shall be the duly selected arbitrator.

Section 3. If for any reason the Employer refuses to participate in the selection of an arbitrator, the Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case.

Section 4. The arbitrator's fee and his expenses, if any, shall be borne by the losing party. The conduct of the hearing and production of witnesses will conform with the requirements of Sections 771.210 and 771.211 of Civil Service Regulations. The arbitrator may at his discretion or upon the request of either party have a verbatim transcript of the hearing perpared. In simple cases where no request for a verbatim transcript is made, a written summary may be prepared. In all cases the losing party will bear the cost for recording the transcript or preparing a summary of the proceedings. Where there is no losing party the Arbitrator will assess the costs of his fee and expenses and the cost of the record to each party. The arbitration hearing will be held, if possible, on the Employer's premises during the regular day shift hours of the basic work week. Travel expenses, if any, for employee witnesses will be borne by the party who requested the employee to appear as a witness. All participants in the hearing shall be in a duty status, if they otherwise would be.

The Activity argues that lying under oath at an administrative hearing is a federal offense and to permit an arbitrator to hear the matter would conflict with Title 18 of the U.S. Code which prescribes penalties for such offenses. Thus, the Activity maintains pursuant to Section 13(a)of Executive Order 11491, as amended, the matter is outside the scope of the negotiated grievance procedure.

The Union contends that a matter may be concurrently a violation of statute and of the contract and that nothing in the U.S. Code bars criminal conduct from being also a matter of administrative action. Moreover, the Union asserts that it has directed its grievance against the Activity as an institution and not Mr. Ruiz as an individual; nor does it seek to have criminal penalties imposed against Mr. Ruiz.

Clearly, an arbitrator would not have the authority to find an individual guilty (or innocent) of a federal crime and sentence him or her accordingly. Thus, the Activity's apparent fears in this respect are not realistically based. I am also of the opinion that because certain conduct may be a federal offense, this does not necessarily bar administrative action on the matter. (In an analagous situation, an activity is not precluded from taking administrative action such as disciplinary or adverse action against an employee merely because the conduct on which the action is based, for instance theft of government property, or setting fire to a government building, also may be a federal offense.)

I am also of the view that the grievance involves the interpretation and application of the contract. In this respect, I note that Article 17, Section 4, by way of incorporating Civil Service Regulations, requires that testimony at arbitration hearings be under oath or affirmation. Thus, allegations of violation of the oath or affirmation are related to the application of the provisions of the agreement. Also I would note that the assurance of truthful testimony in grievance and arbitration proceedings is an integral part of the conduct of those proceedings.

In view of the foregoing, I find that the grievance is subject to the negotiated grievance procedure.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business September 7, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review or a request for extension of time in which to file a request for review is not filed, the parties shall notify the Regional Administrator for Labor-Management Services, U.S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Regional Administrator's address is 14120 Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104.

Kenneth L. Evans

Kenneth L. Evans, Regional Administrator for
Labor-Management Services

Dated: August 23, 1976

Attach.: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION
WASHINGTON, D.C. 20210
4-14-77

869

Mr. John P. Helm
Staff Attorney
National Federation of
Federal Employees
1016 16th Street, N. W.
Washington, D. C. 20036

Re: Department of the Navy
Office of Civilian Manpower Management
Case No. 22-07332(CA)

Dear Mr. Helm:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case, which alleges a violation of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Contrary to the Acting Regional Administrator, I find that a reasonable basis for the instant complaint, which alleges that the Department of the Navy, Office of Civilian Manpower Management failed to consult properly with the National Federation of Federal Employees, as required under the Executive Order's national consultation rights provisions, has been established.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is granted, and the case is hereby remanded to the Regional Administrator who is directed to issue a notice of hearing, absent settlement.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
3535 MARKET STREET ROOM 14120
PHILADELPHIA, PENNSYLVANIA 19104

CERTIFIED MAIL NO. 659579

215-596-1134

October 28, 1976

Mr. John P. Helm
Staff Attorney
National Federation of Federal Employees
1016 16th Street, N.W.
Washington,D.C. 20036

Re: Department of the Navy, Office of Civilian Manpower Management
Case No. 22-07332(CA)

Dear Mr. Helm:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You allege that the Respondent violated Sections 19(a)(1) and (6) of the Executive Order by failing to accord your organization its rights under Section 9 of the Order. You contend that the Respondent failed to give your organization prior notification of a proposed realignment of certain field activities at Lakehurst, New Jersey.

The investigation has revealed that on or about April 5, 1976, the Chief of Naval Operations issued a memorandum nominating "as candidate realignment proposals" three field activities. Among the three was the Naval Air Station, Lakehurst, New Jersey. On or about May 25, 1976, the Commander, Naval Air Systems Command, issued a memorandum directing the realignment of the Lakehurst facility. You contend that the Respondent failed to consult with your organization under National Consultation Rights over the May 25 memorandum issued by the Naval Air Systems Command.

Respondent contends, inter alia, that it is not obligated to consult under Section 9 of the Order with respect to actions of its subordinate commands (in this case Naval Air Systems Command). Upon review of the evidence submitted, I find the Respondent did, in fact, play a role in selecting the Lakehurst facility for realignment. However, I am of the opinion that the identification of three field activities as candidates for realighment as was contained in the April 5, 1976 memorandum did not constitute a substantive personnel policy or substantive change in personnel policy as encompassed by Section 9 of the Executive Order. In my view, the concept of National Consultation Rights as set forth in the Order, its accompanying reports, and the definition developed by the Federal Labor Relations Council,

envision consultation over matters with broader ramifications, matters which affect all employees and not just one installation as involved in the instant complaint, or three as was involved in the April 5, 1976 memo from the Chief of Naval Operations. With regard to the May 25, 1976 memorandum, I am of the further opinion that Respondent did not in the instant case incur any obligation to consult as a consequence of the direction of the realignment of its Lakehurst facility by its subordinate command. In my view, the obligation to consult under National Consultation Rights generally extends only to actions taken by the level of organization at which such rights are afforded. In this case the Department of the Navy rather than the Naval Air Systems Command is the level at which National Consultation Rights are accorded. Thus, I find that the Respondent was not obligated under National Consultation Rights to consult over the May 25, 1976 memorandum issued by Naval Air Systems Command.

Based on the foregoing, I am dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor,Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington,D.C. 20210, not later than close of business November 12, 1976.

Sincerely,

Joseph A. Senge
Acting Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4/14/77 870

Mr. Ronald B. King
Acting Director
Contract Negotiation Department
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Avenue, N.W.
Washington, D. C. 20005

Re: General Services Administration
Region 9
San Francisco, California
Case No. 70-5123 (GA)

Dear Mr. King:

This is in response to your letter of December 10, 1976, which requests reconsideration of the Assistant Secretary's decision on the request for review in the subject case (Request For Review, No. 799).

I have reviewed all of the arguments and supporting evidence you submitted in regard to the decision in this case and am of the opinion that the subject Application for Decision on Grievability or Arbitrability was properly dismissed as untimely. Thus, in my view the Regulations as applied in this case and previous cases are consistent with the objectives of Executive Order 11491, as amended.

It has long been recognized in both the private and public sectors that negotiated agreements which provide for the arbitration of grievances and disputes over interpretation of their terms contribute significantly to the attainment of labor peace and stability. Thus, when the parties have contractually committed themselves to mutually agreeable procedures for resolving their disputes during the period of their contract, I am of the opinion that those procedures should be afforded full opportunity to function. Consistent with this philosophy, Report On A Ruling, Nos. 56 and 61 were issued by the Assistant Secretary.

I do not agree that the interpretation and application of the Regulations in this case constitute a change in past policy. Report On A Ruling, No. 56, issued October 15, 197[illegible], states: "For the purposes of computing the sixty (60) day filing period of an Application for Decision on Grievability or Arbitrability under Section 205.2(a) of the Assistant Secretary's Regulations, there must be a final written rejection after the arbitration clause is invoked." While your Application in the subject case was filed under Section 205.2(b), both 205.2(a) and 205.2(b) are the same in pertinent parts, so that the procedural requirements of one also apply to the other.

It should be noted that nothing in the decision on this case or in Report On A Ruling, Nos. 56 and 61 requires the parties to arbitrate the merits of their dispute. They are only required, if arbitration is provided for in their agreement, to request the other party to arbitrate and receive a final decision on said request before the Assistant Secretary will entertain an Application. Once the question of grievability/arbitrability has been decided by the Assistant Secretary or his representative at the field level, the parties may, if the matter is found grievable or arbitrable, return the merits of the dispute to an agreed-upon step in their contractual grievance procedure, or they may agree at that point to proceed to arbitration.

Under these circumstances, the decision reached in this case (Request For Review, No. 799), in which the Assistant Secretary affirmed the dismissal of the Application for Decision on Grievability or Arbitrability on the basis that it was filed untimely, is hereby affirmed.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
SAN FRANCISCO REGION

GENERAL SERVICES ADMINISTRATION REGION 9 SAN FRANCISCO, CALIFORNIA -ACTIVITY -AND- AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 2126, AFL-CIO -APPLICANT	CASE NO. 70-5123

REPORT AND FINDINGS

ON

GRIEVABILITY

Upon an application for decision on grievability or arbitrability duly filed under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of the matter has been conducted by the Area Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, the undersigned finds and concludes as follows:

The Applicant is the exclusive representative of three collective bargaining units of employees of the General Services Administration, herein called the Activity, in San Francisco Bay Area. Each of these bargaining units excludes supervisors, management officials, employees engaged in Federal Personnel work in other than a purely clerical capacity, guards and Federal protective officers, confidential secretaries, and any other employees who meet the definitions of excluded employees stated in Section 10(b) of the Order. The parties executed a collective bargaining agreement on December 19, 1973, covering the employees in all three units. The agreement has continued in effect at all times relevant to the instant Application.

Investigation revealed that on August 8, 1975, the Applicant received nine grievances from employees it exclusively represents in the Construction Management Division, herein referred to as CMD. The nine grievances were filed pursuant to the parties negotiated grievance procedure and addressed the employees' objections to a proposed reallocation of space among the CMD. Upon receipt of the grievances, the Applicant's President, Lila Bell, contacted the office of the employee who is the Steward responsible for servicing the CMD, George Noller, and arranged for Noller to meet with her in her office. Noller did in fact meet with Bell in her office for approximately one and a half hours on August 8, 1975.

On August 12, 1975, Noller's supervisor served a "Record of Infraction" upon Noller. The Record of Infraction stated the Activity's understanding of the incident which transpired on August 8, 1975, and contended that Noller had indicated that he had not met with Bell in his capacity as a union steward, but rather to work on one of his "old grievances". Noller was denied administrative leave for the period of time he met with Bell on August 8, 1976.

On September 3, 1975, the Activity served upon Noller a "Notice of Proposed Suspension". The Notice proposed that Noller be suspended from duty and pay for one day for failure to follow instructions and for unauthorized absence on August 8, 1975. Specifically, the September 3, 1975, Notice stated that Noller had previously been informed by his supervisor that official time was permitted only for presentation of an agency grievance, not for its preparation; Noller reported that he met with Bell on August 8, 1975, on official time to discuss one of his old grievances; therefore he failed to adhere to his supervisor's instruction that official time was not permitted for the preparation of an agency grievance. Additionally, the Notice stated that Noller neither requested permission in advance to meet with Bell nor notified a supervisor of his absence, thereby rendering him absent without authorization.

Bell, as Noller's representative, responded to the Notice of Proposed Suspension on September 6, 1975. The response argued that on August 8, 1975, she had contacted the employee acting for the supervisor in his absence regarding the meeting with Noller about the CMD grievances, that Noller had the right in accordance with Article VII, Section 7(e) of the negotiated agreement to be absent from his work station to discuss these grievances, and that Noller had fulfilled the requirements of Article VII, Section 7 when he met with Bell on August 8.

Later in September Noller received a final decision stating he would be suspended for one day and that he could contest the propriety of the suspension by grieving under the GSA grievance procedure or appealing to the Civil Service Commission on certain limited grounds.

On October 6, 1975, the Applicant initiated the instant grievance at Step B under the negotiated grievance procedure. The grievance alleged that Article VII, Section 7 of the negotiated agreement and specifically Section 7(e) had been violated. Article VII, Section 7 of the negotiated agreement reads:

> "Absence from Work Station During Duty Hours by Union Officers, Stewards, and Representatives. Union officers, stewards, and representatives may leave their work station during regular duty hours for reasonable periods of time to perform necessary Union representational and consultation duties, in accordance with this agreement.
>
> a. First obtain supervisor's permission to leave, which will be granted unless the work situation demands otherwise.
>
> b. Before contacting another employee of the unit, obtain permission from that employee's supervisor.
>
> c. Immediately advise his/her supervisor at the time of return to the work station and assigned duties.
>
> d. Time spent in handling these duties and responsibilities shall be confined within reasonable limits and will be recorded by the Union representative on a time sheet provided by the supervisor. This time will not be charged to leave.
>
> e. All officers, Chief Steward and Stewards may receive and investigate complaints or grievances from the employees of their respective Local,

f. The Union recognizes its responsibility to insure that its representatives do not abuse this authority by unduly absenting themselves from their assigned work areas, and that they will make every effort to perform representational functions in a proper and expeditious manner."

The Activity denied the grievance October 15, 1975. In its response, the Activity contended that Noller stated he met Bell on August 8, 1975, to discuss one of his old grievances, which the Activity interpreted to be a grievance under the agency grievance procedure.. Since Article VII, Section 7 of the agreement did not pertain to agency grievances, the Activity contended that the resulting disciplinary action was precluded from being processed under the negotiated agreement. Additionally, the Activity stated that even if Noller had been participating in a matter governed by the negotiated agreement during the time in question, neither Article VII, Section 7(e) nor any other portion of the agreement would have been violated since Noller did not have proper clearance prior to leaving the worksite.

The Applicant advanced the grievance to Step C October 20, 1975. On October 31, 1975, the Activity denied Step C of the grievance on essentially the same grounds as stated above. On November 25, 1975, the Applicant forwarded the grievance to Step D. The Activity reiterated its rejection of the grievance on November 26, 1975. Step D is the final step in the negotiated grievance procedure before arbitration.

The Activity informed the Applicant on December 4, 1975, of its position that the matter could be pursued in the arbitration forum. The Applicant responded on December 7, 1975, that the arbitrability of the grievance was not at issue; and that the unresolved issue was whether the grievance was grievable under the parties' negotiated procedure. The instant Application requesting a decision on whether the grievance was grievable according to the parties' negotiated agreement was filed on January 15, 1976.

It is the Applicant's position that the disciplinary action and the disapproval of administrative leave directed against Noller is grievable under the parties' negotiated grievance procedure since Noller was processing grievances filed under the negotiated agreement at the time of the incident in question.

It is the position of the Activity that the instant Application should be dismissed because it is procedurally deficient and because the questions of grievability and arbitrability are moot.

Specifically, the Activity argues that the Application is procedurally defective because Item 3(d) of the Application cites sections of the negotiated agreement pertinent to the question of grievability that were not cited by the Applicant as being at issue during the processing of the grievance.

Further, although the Activity acknowledges that time spent by stewards working on grievances under the negotiated procedure is a matter covered by the agreement, the Activity contends that the grievability determination in this case must be made in conjunction with a finding on the facts surrounding the statement allegedly made by Mr. Noller to his supervisor at the time of the incident and reiterated during the processing of the grievance rather than solely upon the activity Noller actually was engaged in during the time for which he was disciplined.

In addition, the Activity argues that regardless of the grievability determination, the question of grievability is moot because the Activity rendered a response to the grievance at each step of the negotiated grievance procedure, did not arrest the processing of the grievance at any point, and never rejected the grievance as required by Section 205.2(b) of the Assistant Secretary's Regulations.

Finally, the Activity claims any question of arbitrability is moot since the Applicant neither attempted to advance the instant grievance to arbitration nor submitted the question to the Department of Labor.

Contrary to the Activity, the undersigned does not agree that the Application is procedurally defective because Item 3D of the Application cites sections of the Agreement that were not cited by the Applicant as being at issue during the processing of the grievance. It appears that the Activity incorrectly assumes that the items identified in 3D of the Application as being pertinent to the question of grievability are in fact the items that the Applicant is alleging in its grievance were violated.

In fact, item 3D of the Application simply serves to designate the portions of the negotiated agreement the Applicant believes to be relevant to the question of whether or not the grievance is grievable under the parties' negotiated agreement. The sections of the negotiated agreement which the Applicant had claimed were violated in the grievance are identified elsewhere in the Application.

Second, the undersigned does not concur with the Activity's reasoning that the grievability decision must be made in conjunction with a finding on the facts surrounding the statement Noller allegedly made to his supervisor that he was involved in an activity not governed by the negotiated agreement during the time for which he was disciplined.

The Applicant has consistently maintained that Noller was working on grievances under the negotiated procedure during the period for which he was disciplined. It has provided a statement from Noller which unequivocally states he and Bell were discussing the grievances filed by members of CMD during the time for which he was disciplined and were not discussing any agency grievances. Additionally, the Applicant has supplied copies of the nine grievances dated August 8, 1975, from the CMD employees which were received by the Applicant for processing under the negotiated grievance procedure.

The Activity has not submitted any evidence to indicate that Noller was participating in any activity not covered by the negotiated agreement during the period of time for which he was disciplined.

Assuming arguendo that Noller falsely informed his supervisor as to the reason for his August 8, 1975, absence, it is clear that as early as September 6, 1975, the date on which the Applicant responded to the Notice of Proposed Suspension, the Activity was aware of the contention by the Applicant that Noller had been engaged in a conference over grievances arising under the negotiated agreement. Or, to put it more precisely, the Activity was aware of the contention that Noller had been performing representational functions during duty hours as permitted by Article VII, Section 7 of the agreement.

It is for the Activity to determine whether, when faced with such a contention, that claim warrants investigation or, rather, it should maintain its initial grounds for the disciplinary action.

However, when the gravamen of a grievance lies in the negotiated agreement, a party to that agreement cannot frustrate the vindication of rights arising under that agreement by a claim that it relied on inaccurate or false information given it by the other party to the dispute. This is not to say that an activity is without redress when it is deliberately misinformed by an employee on a matter of legitimate interest; however, that redress cannot include a denial of rights arising under a negotiated agreement or the Executive Order.

In this regard, see NLRB v. Burnup & Sims, Inc., 379 U.S. 21 where, in the context of a private sector proceeding, the Court held that, in substance, it is no defense to assert a good faith belief that certain misconduct occurred in the context of protected activity when, in fact, such misconduct did not occur, since the controlling consideration must be the uninhibited exercise of the protected activity. Justice Harlan, concurring in part and dissenting in part, would, in effect, limit liability to the time commencing after the party learned, or should have learned, of his mistake.

In the opinion of the undersigned, the Court's rationale in Burnup & Sims, Inc. supra has application to the instant matter.

As was the exercise of protected activity in that case, the controlling consideration in the instant matter is set forth in Article III of the negotiated agreement where it states, in pertinent part:

> It is the intent and purpose of the Employer and the Union that this Agreement will accomplish the following objectives:
>
> . . .
>
> e. To facilitate the adjustment of grievances, disputes, and differences, related to matters covered by this Agreement.

Such resolution of disputes cannot be denied by an assertion that the subject matter of the dispute does not arise under the agreement, notwithstanding a good faith but mistaken belief in that position, when the dispute, in fact, involves matters covered by the agreement.

Therefore, the undersigned concludes that Noller was in fact processing the nine CMD grievances filed pursuant to the negotiated grievance procedure during the period of time for which he was later disciplined. The processing of grievances under the negotiated grievance procedure is an activity encompassed by Article VII of the parties' negotiated agreement. Therefore, it is concluded that the grievance is on a matter subject to the grievance procedure of the parties' agreement.

The undersigned rejects the Activity's contention that the question of grievability is moot because it offered a response to the grievance at each step and never irrevocably rejected the grievability of the grievance. In this regard, although the Activity offered a response to the grievance at each

step of the process and did not arrest the grievance at any step, each step of the grievance procedure was necessarily restrained by the Activity's repeated assertion of the position that the grievance was not grievable because it did not involve an issue covered by the negotiated agreement. Because of this ever-present, unresolved question of grievability, the issues of the grievance were never framed within the context of the agreement provisions and the Activity's position on the discipline was never presented in relation to the terms of the agreement. Consequently, the grievance was never substantively pursued through the negotiated procedure.

Additionally, although the Activity never unequivocally rejected the grievability of the grievance, neither 13(d) [1/] of the Order nor Section 205.2(b) of the Regulations [2/] require a final rejection before an application may be filed. In this regard, once a question of grievability has been raised by a party, an Application for a decision on grievability is not precluded from consideration by the Assistant Secretary on the ground that the rejection of the grievance is not a final rejection or in a situation where the merits of the grievance have been only superficially addressed. Noting particularly that the instant Application was filed within 60 days of the Activity's rejection of Step D of the grievance, it is concluded that the Application is not defective and the question of grievability is not moot.

Further, since the undersigned has determined that Noller was participating in an activity covered by the negotiated agreement during the time for which he was disciplined, and that the grievance is on an issue which is grievable under the parties' negotiated grievance procedure, it would appear that the parties should return to an appropriate step of their negotiated grievance procedure with the understanding that the issue in dispute is one which is covered under their negotiated agreement. If the parties are able to reach agreement on the appropriate step of the grievance procedure to return to, they may do so. Absent such agreement, it is concluded that the parties should return to the first step of their negotiated grievance procedure.

Finally, in agreement with the Activity, the undersigned agrees that the question of arbitrability is moot at this point since is has not been raised.

1/ Section 13(d) of the Order reads, in part, "Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Assistant Secretary for decision."

2/ Section 205.2(b) of the Assistant Secretary's Regulations reads: "Where a grievance does not concern questions as to the applicability of a statutory appeal procedure, an application for a decision by the Assistant Secretary as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, must be filed within sixty (60) days after service on the applicant of a written rejection of its grievance on the grounds that the matter is not subject to the grievance procedure in the existing agreement, or is not subject to arbitration under that agreement: Provided, however, that such prescribed sixty (60) day period for filing an application shall not begin to run unless such rejection is expressly designated in writing as a final rejection."

Accordingly, in view of the foregoing, the undersigned finds that the grievance which is the subject of the instant Application arises under the negotiated agreement and, further, directs the parties to process this grievance through the negotiated grievance or arbitration procedure.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business on June 29, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review, is not filed the parties shall notify the Regional Administrator for Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Gordon M. Byrholdt
Regional Administrator
San Francisco Region
9061 Federal Building
450 Golden Gate Avenue
San Francisco, CA 94102

Dated: June 14, 1976

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

871

April 18, 1977

Ms. Janet Cooper
Staff Attorney
National Federation of
Federal Employees
1016 16th Street, N.W.
Washington, D.C. 20036

Re: U.S. Information Agency
Washington, D.C.
Case No. 22-7367(CA)

Dear Ms. Cooper:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a) (1), (5) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find, in agreement with the Regional Administrator, that the evidence is insufficient to establish a reasonable basis for the instant complaint and that, consequently, further proceedings in this matter are unwarranted. In this connection, it should be noted that although the Complainant herein is precluded from seeking relief under Executive Order 11491, as amended, as Section 3(b)(5) excludes the employees it seeks to represent from the coverage of the Order, this would not necessarily preclude the Complainant from its seeking whatever appropriate relief may be afforded by Executive Order 11636.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA. 19104
TELEPHONE 215 597-1134

October 8, 1976

Ms. Janet Cooper
Staff Attorney
National Federation of Federal
Employees
1016 16th Street, N.W.
Washington,D.C. 20036
(659531)

Re: U.S. Information Agency
Case No. 22-7367(CA)

Dear Ms. Cooper:

Your organization's unfair labor practice complaint in the above-captioned case alleging certain violations of Executive Order 11491, as amended, has been investigated and carefully considered. For the reasons discussed herein, it does not appear that further proceedings in this case are warranted.

The complaint alleges that the United States Information Agency (hereinafter the Respondent) violated the Order in two specific instances; that the Respondent "refused to recognize our continuing exclusive recognition for all television technicians regardless of pay plan" and "decided unilaterally to restrict Local 1447's recognition to technicians classified under the general schedule . . . . . without decertification, without a clarification of unit petition, and without advising employees that choosing a conversion to Foreign Service meant they could no longer be represented by Local 1447." 1/ You contend that this alleged action by the Respondent constitutes an improper refusal to accord appropriate recognition to your organization within the meaning of Section 19(a)(5) of the Order and,thereby, violated Sections 19(a)(1) and (a)(5) of the Order. Secondly, the Respondent violated Section 19(a)(6) of the Order by denying your organization "the right to participate in a May 1976 meeting concerning policy changes which affect Foreign Service Television personnel." 2/ (emphasis added)

The investigation by the Area Administrator disclosed that, as a result of a Civil Service Commission classification survey, all employees in your organization's bargaining unit, were reclassified on or about February 16, 1975,from the Wage Board pay schedule to the General Schedule (hereinafter GS) plan. Following this reclassification and in accordance with the Respondent's

1/ Complaint Against Agency (LMSA 61) filed July 21, 1976.
2/ Ibid.

established personnel policy and practice, the GS employees became eligible to convert their appointments from GS to Foreign Service status (hereinafter, FSLR) and from February 16, 1975 to July 26, 1976, thirty-one (31) of the thirty-two (32) eligible employees in your unit availed themselves of this opportunity and converted to FSLR status.

Appointments to FSLR were made under the provisions of Section 522 of the Foreign Service Act of 1946, as amended (22 USC 801 et seq).

The investigation further disclosed that in a letter dated May 12, 1976, Mr. James Randall of your organization requested that the Respondent consult with your organization with respect to proposed changes in personnel policies and practices affecting Foreign Service employees. On at least four occasions (May 5, May 12, May 26 and June 1, 1976) the Respondent met with representatives of the AFGE Local 1812, who are recognized as exclusive representative of a unit of Foreign Service Employees at the Respondent Agency for the purpose of discussing matters relating to Foreign Service personnel. The Respondent did not invite or permit your organization to be represented at these meetings.

The investigation also revealed that on or about May 21, 1976, the Respondent verbally notified your organization that it was the Respondent's position that employees who converted from GS to FSLR status were excepted from the purview of the Order and consequently, were no longer in your organization's unit. The Respondent, replying to your organization's request for a written clarification of that position, impliedly confirmed its position in a letter dated June 4, 1976. You contend that this action by the Respondent is violative of Sections 19(a)(5) and (a)(6) of the Order.

Foreign Service employees of the Department of State, the Agency for International Development and the Respondent are excluded from coverage under the Order by Section 3(b)(5) of the Order. 3/ In addition, the Employee Management Relations Commission, which was established pursuant to Executive Order 11636, and has jurisdiction over employees of certain Foreign Affairs Agencies,including the Respondent Agency, has ruled that FSLR or Foreign Service Reserve type employees of the Respondent Agency are'employees' as defined in Executive Order 11636. 4/ Based on the foregoing, I conclude that any unit employee who converted to FSLR status in doing so removed himself/herself from under the aegis of the Order and is, thereby, excluded from your organization's unit by the aforementioned Section 3(b) of the Order.

3/ Section 3(b)(5) provides: "This Order does not apply to the Foreign Service of the United States: Department of State, United States Information Agency and Agency for International Development and its successor or Agency or Agencies."
4/ EMRC Case No. R-4, 1975.

With regard to the Respondent's alleged refusal to accord appropriate recognition to your organization, the evidence as submitted in this case supports a conclusion that the Respondent only acted to advise your organization of what it correctly opined to be an irrefutable fact - that those employees who so converted to FSLR status were excluded from coverage under the Order and consequently were no longer eligible to be represented in your organization's bargaining unit. In the absence of any allegation or evidence that the Respondent either coerced or fraudulently induced these employees to so convert in order to decimate your organization's recognition, I can find no merit to your contention that the Respondent violated Sections 19(a)(1) or (a)(5) of the Order.

With regard to the Respondent's alleged violation of Section 19(a)(6) of the Order by failing to permit your organization to attend a May 1976 meeting concerning proposed changes in personnel policies and practices affecting Foreign Service employees, the evidence reveals that this meeting was limited in its scope to matters relating to Foreign Service personnel of the Respondent Agency. Based on my conclusion above that the FSLR employees are excluded from your organization's unit by Section 3(b) of the Order and in the absence of my evidence that any discussions were conducted at this meeting concerning personnel policies and practices or matters affecting employees in your organization's unit, I find that your contention that the Respondent refused to consult, confer or negotiate with your organization as required by the Order, is also without merit.

For the reasons annunciated above, I am hereby dismissing your complaint in its entirety in that your organization has failed to establish a reasonable basis that Sections 19(a)(1), (a)(5) or (a)(6) of the Order were violated by the Respondent.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and Respondent. A statement of service should accompany this request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business October 22, 1976.

Sincerely,

Kenneth L Evans

Kenneth L. Evans
Regional Administrator

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/18/77

872

Mr. Robert J. Crane
928 West Wiser Lake Drive
Ferndale, Washington 98248

Re: Federal Aviation Administration
Northwest Region, Seattle, Washington
Case No. 71-3757

Dear Mr. Crane:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges a violation of Section 19(a)(1), (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted inasmuch as a reasonable basis for the instant complaint has not been established.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

October 5, 1976

Mr. Robert J. Crane
928 West Wiser Lake Drive
Ferndale, Washington 98248

Re: FAA & NAATS
Case No. 71-3757

Dear Mr. Crane:

The above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Your complaint alleges that retaliatory action was taken against you for filing grievances and unfair labor practices against the Agency. In this regard it is noted that you were unable to meet nondiscriminatory medical standards and that you were treated in a fashion similar to other employees who also failed to meet medical standards to the same degree. Furthermore, there is no evidence that your previous grievance and unfair labor practice activities were considered in placement procedures. Finally, prior to being placed on involuntary sick leave you had used your annual and sick leave and were given the same options as other employees in a situation similar to yours.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on October 20, 1976.

Sincerely,

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/18/77

873

Mr. Thomas O'Leary
President
American Federation of
Government Employees, AFL-CIO
DCASR Council of Locals
P. O. Box 3037-Lennox Branch
Inglewood, California 90304

Re: Defense Supply Agency, DCASR
Los Angeles, California
Case No. 72-6087

Dear Mr. O'Leary:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges a violation of Section 19(a)(1) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

September 28, 1976

Mr. Charles Wells
President, AFGE Local 2433
P. O. Box 3037 - Lennox Branch
Inglewood, CA 90304

Re: DSA, DCASR
Los Angeles, CA -
AFGE Local 2433
Case No. 72-6087

Dear Mr. Wells:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. The material requested by Steward Bywater does not appear to be of such a nature that its destruction would in any way prejudice or preclude the pursuance of Mr. Tremayne's grievance on his performance evaluation. In fact, it is acknowledged by Steward Bywater that approximately 75% of the notes that constitute the basis of this complaint were read to her at the second step grievance meeting and Complainant does not claim that information contained in these notes was withheld at this meeting.

I am, therefore, dismissing the complaint in this matter.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20210, not later than the close of business on October 12, 1976.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4/18/77 874

Albert F. Landgraf, President
American Federation of Government
Employees, Local 1711, AFL-CIO
1136 Washington Avenue
St. Louis, Missouri 63101

Re: Defense Supply Agency
Defense Contract Administration
Services Region
St. Louis, Missouri
Case No. 62-4812(CA)

Dear Mr. Landgraf:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that the evidence herein is insufficient to establish a reasonable basis for the instant complaint and that, consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 27, 1976

Colonel John A. Love, USA, Commander
Defense Contract Administration Services
Region, St. Louis
1136 Washington Avenue
St. Louis, Missouri 63101

Mr. Albert F. Landgraf, President
American Federation of Government
Employees, AFL-CIO
Local 1711
1136 Washington Avenue
St. Louis, Missouri 63101

Re: American Federation of Government
Employees, Local 1711
(Complainant)
and
Defense Contract Administration
Services Region, St. Louis
Defense Supply Agency
(Respondent)
Case Number: 62-4812(CA)

Dear Colonel Love and Mr. Landgraf:

The above-captioned case charging violations of Section 19, Executive Order 11491, as amended, has been investigated and considered carefully.

The Complaint Against Agency (LMSA 61) filed jointly by Messrs. Martin and Landgraf alleged violations of Section 19(a)(1) and (6) of the Executive Order by the Defense Contract Administration Services Region (DCASR), St. Louis. The complaint charged that DCASR made a unilateral change in policy in the Merit Promotion Program without the prior knowledge of the exclusive representative (AFGE), without communication with the exclusive representative, and therefore failed to consult and/or confer with the exclusive representative. The complaint pointed out that this "unilateral change in policy" deprived Mrs. Alberta Unterreiner of advancement due her under the Merit Promotion Program by virtue of her "repromotion rights of special consideration," to which she was entitled as the result of a previous non-voluntary demotion action.

It does not appear that further proceedings in this matter are warranted since a reasonable basis for the complaint has not been established.

During the course of an investigation conducted by the St. Louis Area Office, the Respondent contended that, since at least January 1, 1975 it had consistently followed a policy, albeit unwritten, of refusing to grant "special consideration for repromotion" to employees who had been subjected to non-voluntary demotion, where, as here, such repromotion would have enabled their subsequent promotion to a higher grade without further competition. Although afforded ample opportunity to do so, the Complainant failed to provide any evidence tending to refute Respondent's position, or to show that the action taken in the case of Mrs. Unterreiner represented a deviation from actions previously taken in similar instances. Thus, the Complainant has failed to bear the burden of proving its allegations as required by Section 203.15 of the Regulations.

I am, therefore, dismissing the Complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a Request for Review with the Assistant Secretary and serving a copy upon this office and the Respondent. A Statement of Service should accompany the Request for Review.

Such requests must contain a complete statement setting forth the Facts and Reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, Northwest, Washington, D. C. 20216 not later than close of business November 11, 1976.

Sincerely,

Cullen P. Keough

CULLEN P. KEOUGH
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/19/77

875

Mr. John W. Mulholland
Director, Contract Negotiation Department
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Avenue, N. W.
Washington, D. C. 20005

Re: Department of Justice
Immigration and Naturalization
Service, Washington, D. C.
Case No. 22-6812(AP)

Dear Mr. Mulholland:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings On Grievability in the above-named case.

In agreement with the Regional Administrator, I find that the grievance herein is not on a matter subject to the negotiated grievance and arbitration procedure. In this regard, I note that it has been held by the Federal Labor Relations Council that the mere inclusion of the language of Section 12(a) of Executive Order 11491, as amended, within the negotiated agreement does not serve to extend the scope of the negotiated grievance and arbitration procedure to cover disputes arising from the interpretation and application of the rights and obligations contained in that Section of the Order. See Department of the Air Force, Scott Air Force Base, FLRC No. 75A-101. With respect to the incorporation of Section 11(b) of the Order within the agreement, I find no evidence herein that the parties intended to make the instant matter grievable under the terms of the agreement by incorporating the language of that portion of the Order. Again, the mere inclusion of the language of Section 11(b) of the Order, without any evidence to show that the parties intended thereby to make the matters contained therein subject to the negotiated grievance and arbitration procedure is not, in my view sufficient to serve as a basis for including disputes over the matters contained in that Section within the negotiated grievance and arbitration procedure.

Accordingly, and noting that the Council's recent related negotiability determination (FLRC 76A-26) would not require a

contrary result, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Grievability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATION

DEPARTMENT OF JUSTICE, IMMIGRATION AND NATURALIZATION SERVICE

Activity/Applicant

and

Case No. 22-6812(AP)

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, NATIONAL IMMIGRATION AND NATURALIZATION SERVICE COUNCIL, AFL-CIO

Labor Organization

REPORT AND FINDINGS
ON
GRIEVABILITY

Upon an application for a decision on grievability having been filed in accordance with Section 205 of the Rules and Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

The Labor Organization, the National Immigration and Naturalization Service Council, AFGE, AFL-CIO, is recognized as the bargaining agent for certain employees of the Immigration and Naturalization Service. The parties negotiated an agreement which became effective on April 29, 1975 for a one-year period with provisions for one-year renewals.

On or about November 7, 1975, the Activity informed the Union of its intention to require all uniformed personnel to wear a Bicentennial patch on the right arm of their uniform shirts beginning January 1, 1976. The Activity solicited comments from the Union regarding the implementation and impact of this decision. In response, the Union noted that removal of the patch would leave an unsightly dark patch on the uniform shirt which might require employees to purchase new shirts to replace those damaged by the patch. The Union proposed that uniformed personnel be permitted to substitute an AFGE patch for the Bicentennial patch after December 31, 1976 to wear for as long as they wished.

The Activity rejected the Union's proposal as non-negotiable contending that it was within management's retained right under the Order to establish reasonable requirements for uniformity in dress.

On January 17, 1975, the grievance which prompted the filing of this application was filed with the Activity. The Union alleged that the Activity violated Article 4, Section 8 and Article 5, Section A of their negotiated agreement by making a unilateral change (instituting the wearing of Bicentennial patch) in their Administrative Manual without negotiating with the Union. On February 20, 1976, the Union requested that the matter be submitted to arbitration.

The Activity, in filing the instant application, contends that the contract articles cited by the Union as having been violated are restatements of Executive Order language (Article 4, Section B, corresponds to Section 12(a) of the Order and Article 5, Section A, corresponds to Section 11(b) of the Order). As such, the Activity maintains that the inclusion of the language of those provisions in the contract does not extend the coverage of the negotiated grievance procedure or the arbitration procedure to the matter of activity initiated changes in regulations (or working conditions) during the life of the agreement. Thus, the Activity concludes any obligations owed to the Union as a consequence of its initiation of any change flow from the Order not from the contract. In support of its position, the Activity cites Department of the Air Force, Scott Air Force Base and National Association of Government Employees, Local R7-27, FLRC No. 75A-101.

The Union takes a contrary position maintaining that although the obligations enumerated in the disputed contract provisions reiterate language in the Executive Order, the obligations contained therein flow from the contract as well as the Executive Order and are thus enforceable under the contract procedures. The Union also contends that the FLRC's Scott decision (supra) does not take into account what was intended by the parties in including Executive Order language in a contract. In this respect the Union contends that their inclusion of the Section 12(a) language in the contract comprehended more than mere repetition of the Executive Order. The Union avers that the language encompasses the parties' agreement to stabilize their relationship and the employees' working conditions. Thus it contends that the Activity's alleged unilateral change in regulations (and working conditions) was indeed a contract violation.

The issue before me is, essentially, whether incorporation of language from Section 12(a) and 11(b) of the Executive Order results in the extension of the jurisdiction of the negotiated grievance and arbitration procedures to cover the interpretation and administration of the rights and obligations contained therein. I am of the opinion that Scott 1/ governs certainly insofar as Section 12(a) language is concerned. Also, in my view, inasmuch as the Section 11(b) language sets forth rights and obligations under the Executive Order, the

1/ Department of the Air Force, Scott Air Force Base and National Association of Government Employees, Local R7-27, FLRC No. 75A-101, Footnote 8.

Federal Labor Relations Council, the Federal Service Impasses Panel and the Assistant Secretary of Labor for Labor-Management Relations are the authorities which have been given the responsibility of adjudicating disputes involving alleged violations of rights and obligations established by the Executive Order-

In summary, I find that the matter raised by the grievance in the instant case is a matter of interpretation of the Executive Order and not of the parties' contract. Thus, it is not subject to the arbitration procedures contained in that contract.

Pursuant to Section 205.5(b) of the Assistant Secretary's Rules and Regulations, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary Secretary. A copy of such a request must be served on me and all other parties to the proceeding and a statement of service should accompany the request. A request for review, including a complete statement setting forth the facts and reasons on which the request is based must be received by the Assistant Secretary for Labor-Management Relations, 200 Constitution Avenue, N.W., Washington,D.C. 20216 no later than close of business September 8, 1976.

Kenneth L. Evans

Kenneth L. Evans, Regional Administrator
for Labor-Management Services

Philadelphia Region

Dated: August 24, 1976

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/19/77

876

Ms. Jimmie F. Griffith
National Representative
American Federation of Government
Employees
3141 Cliffoak Drive
Dallas, Texas

Re: Defense/Army and Air Force Headquarters
Air Force Exchange Service
Dallas, Texas
Case No. 63-6356(GA)

Dear Ms. Griffith:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability in the instant case.

In your request for review, you contend that the Acting Regional Administrator erred in finding untimely, and hence not grievable or arbitrable, that part of your grievance which relates to alleged disparate treatment by the Activity in designating duty assignments and recipients of special awards.

In reaching his decision, the Acting Regional Administrator found that such alleged disparate treatment alluded to by the grievant appears to have taken place, and to have been within the grievant's cognizance, more than twenty-one days prior to the date the grievance was initiated, thus rendering the instant grievance untimely. In this connection, he cited Article XXXV, Section 5, Step 1, of the parties' negotiated agreement, which reads in pertinent part: ". . . Any complaint which is not taken up within twenty-one (21) calendar days from the date the employee became aware of the grievance shall not be presented or considered at a later date."

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that the subject grievance is not grievable or arbitrable under the parties' negotiated agreement. Accordingly, your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
KANSAS CITY REGION

DEFENSE/ARMY AND AIR FORCE, HEADQUARTERS ARMY AND AIR FORCE EXCHANGE SERVICE, DALLAS, TEXAS Activity 1/ and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, LOCAL UNION 2921 Applicant 2/	Case No. 63-6356(GA)

REPORT AND FINDINGS

ON

ARBITRABILITY

Upon an Application for Decision on Arbitrability duly filed on February 5, 1976 under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of this matter has been conducted by the Dallas Area Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

The Application requests a decision as to whether a matter grieved by Ms. Mary Ord, an employee of the Activity, is subject to arbitration under Article XXXVI of the Agreement between the above named parties.

Local 2921, American Federation of Government Employees, AFL-CIO, was certified on November 10, 1971 as the exclusive representative of the employees of the following unit:

INCLUDED: All regular full-time and regular part-time civilian hourly pay plan and universal salary plan employees, including off-duty military personnel in either of the foregoing categories, employed by the Army and Air Force Exchange Service at its headquarters in Dallas, Texas.

1/ Hereinafter also referred to as the Employer or AAFES.

2/ Hereinafter also referred to as the Union or AFGE.

EXCLUDED: Temporary full-time, temporary part-time, on-call, casual employees, guards and watchmen; and employees engaged in personnel work in other than a purely clerical capacity, management officials, supervisors, professional employees, military personnel assigned as a military duty, and employees at the Office of the General Counsel, Security Office, Inspection and Audit Division and Executive Office.

The parties entered into a collective bargaining agreement effective December 30, 1971 for a period of two (2) years. The Agreement is automatically extended on a year to year basis absent timely notification by one of the parties to terminate or modify the Agreement. At all times relevant herein, the grievant was a unit employee subject to the Agreement.

The current Collective Bargaining Agreement, Section 2 of Article XXXV, Grievance Procedure defines a grievance as:

> A complaint of dissatisfaction and a request for adjustment of a management decision, or some aspect of the employment relationship or working conditions which is beyond the control of the employee or the union, but within the control of the employer. This includes but is not limited to disputes over the interpretation and application of this Agreement, past practices or any law, regulation, rule or policy. . ., except those items specifically excluded as nongrievable pursuant to AR 60-21/AFR 147-15.

Sections 3, (14), and (20) of Article XXXV, Grievance Procedure, read:

> Section 3. Complaints resulting from the following types of action shall not be grievable under this Article or the AAFES grievance procedure.
>
> (14) Cases involving unfair labor practices as set forth in EO 11491, unless the issues involved are otherwise subject to this grievance procedure.
>
> (20) Matters which are properly subject for a request for review.

The grievance procedure outlines three steps in the processing of grievances prior to arbitration; Step 1 of the procedure reads as follows:

> Step 1. Complaints normally will be discussed first with the immediate supervisor, and at this discussion the employee may, if he wishes, be represented by his steward or by another employee of the Exchange. The immediate supervisor shall state his decision orally within two (2) workdays of the discussion. Any complaint which is not taken up within twenty-one (21) calendar days from the date the employee became aware of the grievance shall not be presented or considered at a later date.

The second and third steps of the procedure provide for procedures to be used in appealing the grievance to the next appropriate step, absent satisfactory resolution of the matter.

Section 7 of Article XXXV, Grievance Procedure, and Section 1 of Article XXXVI, Arbitration, provide for submission to arbitration of an unresolved grievance upon written request of the Union or the Employer. These sections also set forth the time limits within which a request for arbitration must be made, as well as procedures for extension of time limits and penalties for failure to observe such limits.

A review of the written grievance dated November 17, 1975 indicates that the grievant, Ms. Mary Ord, alleges that the following provisions of the negotiated agreement had been violated:

Article V. Rights of Employees; Article VIII. Union Representation; Article XX. Promotions, Downgrades and Details; Article XXIV. Job Analysis and Evaluations; Article XXVI. Employee Utilization; Article XXVII. Employee Development; and Article XXVIII. Equal Employment Opportunity.

She alleges specifically that:

(1) her position is undergraded;

(2) her position description is inaccurate in that it fails to reflect the degree of complexity of duties actually performed;

(3) she has received disparate treatment as compared to other employees in that they have received preferential duty assignments and special awards;

(4) she has been denied on-the-job training by not being allowed to attend trade shows; and

(5) as a result of having testified at a hearing for another employee and for having engaged in union activities, derogatory remarks were entered on her counseling card, and she failed to receive either a promotion or an upgrading of her position.

The following is a chronological list of facts relative to the processing of the grievance:

(1) The date on which the grievance was initiated orally at Step 1 is not specified.

(2) November 17, 1975 - Written grievance filed at Step 2.

(3) December 2, 1975 - Written response to Step 2.

(4) December 5, 1975 - Written appeal to Step 3.

(5) January 6, 1976 - Written response to Step 3, rejecting the grievance as not grievable. 3/

With respect to the grievant's complaint concerning the grade level of her position, it appears that she has filed a job grading appeal under the provisions of Exchange Service Bulletin (ESB) 238 (15-50) in accordance with applicable statute. Inasmuch as Section 13(a) of Executive Order 11491, as amended, provides that a negotiated agreement's grievance and arbitration procedures ". . . may not cover matters for which a statutory appeal procedure exists. . .," I find that the grievance as it relates to the appropriateness of Ord's assigned grade level is not grievable or arbitrable under the negotiated grievance procedures.

With respect to that portion of the grievance which concerns the content of Ord's position description, and assignment to specific duties, it appears that Army Regulation (AR) 60-21/AFR 147-15 provides for the filing of a request for review by employees over disputes concerning job description, grade allocation and assignment or reassignment. Accordingly, since the negotiated grievance procedure specifically excludes from its coverage ". . Matters which are properly subject for a request for review," (Article XXXV, Section 3(20)) and ". . . those items specifically excluded as non-grievable pursuant to AR 60-21/AFR 147-15," (Article XXXV, Section 2), I conclude that the grievance at issue is not grievable or arbitrable insofar as it relates to job content and assignment, and grade allocation.

Further, I find to have been untimely filed that portion of the grievance which alleges that the grievant was subjected to discriminatory counseling evaluations and "derogatory remarks" because of her union affiliation and activities on behalf of other employees. I find likewise, that those allegations by the grievant which relate to disparate treatment by AAFES in designating duty assignments and recipients of special awards were filed untimely. All specific instances of such alleged discriminatory comments and disparate treatment alluded to by the grievant appear to have taken place and to have been within the grievant's cognizance more than twenty-one days prior to the date the grievance was initiated.

In this regard, a review of the evidence submitted indicates that the alleged discriminatory comments entered on the grievant's counseling card were recorded

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3/ Although the Applicant did not invoke arbitration prior to filing the Application, the Activity has indicated by its answer at Step 3 of the grievance procedure, and in a letter dated May 4, 1976, to the Area Administrator its opinion that no useful purpose would be served by requiring such prior request. Accordingly, the Activity's written rejection of the grievance at Step 3 of the grievance procedure constitutes, in my view, a final rejection of the matter, within the meaning of Section 205.2(b) of the Assistant Secretary Regulations.

in late 1972 and early 1973. Further, with respect to her assigned duties, the grievant has indicated that she has been performing the duties in question since approximately December of 1973. As previously noted, Step 1 of the negotiated grievance procedure provides that no consideration will be given to complaints not filed within twenty-one days of the date of the employee became aware of the grievance. Moreover, inasmuch as the portion of the grievance alleging discrimination in promotion based on union activities concerns a matter which would be subject to the unfair labor practice procedures set forth in Executive Order 11491, as amended, and the issues raised do not appear to be otherwise subject to the grievance procedure, I conclude that Article XXXV, Section 3 (14) of the Agreement precludes this issue from consideration under the negotiated grievance procedure.

Accordingly, based upon the foregoing considerations, including the facts revealed by investigation and the positions of both parties, I find that the above matters raised in the grievance at issue are not subject to the parties' negotiated grievance procedure and, therefore, are neither grievable nor arbitrable under that procedure.

However, with respect to that portion of the grievance which alleges disparate treatment with respect to opportunity for training, as reflected by the assigned attendance at a November 15 through 18, 1975 trade show held in Chicago, Illinois, I find that the instant grievance is timely filed. Further, it is my view that the grievance, in this regard, is clearly encompassed by the language of Article XXVII, Employee Development, Section 2, which reads as follows:

> The Employer shall make every reasonable effort to provide assistance, recognition and opportunity for training of employees when the need for training is related to the individual's officially assigned duties. Training required by the Employer will be accomplished at the Employer's expense.

Therefore, I find that the instant grievance, insofar as it relates to the question of whether the Employer fulfilled its obligations under Article XXVII, Section 2, when it disapproved the grievant's attendance at the Chicago trade show, is grievable and arbitrable under the terms of the parties' negotiated grievance procedure. In all other respects, as previously noted, I conclude that the grievance may not be grieved under the parties' Agreement.

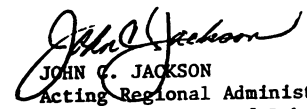
In view of the foregoing findings, the parties are hereby directed to process the grievance, to the extent consonant with my decision herein, in accordance with their negotiated grievance procedure.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216. A copy

of the request for review must be served on the undersigned Regional Administrator as well as on the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business November 15, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review is not filed, the parties shall notify the Regional Administrator for Labor-Management Services, U. S. Department of Labor, in writing, at the address shown below, within 30 days of this decision as to what steps have been taken to comply herewith.

Dated at Kansas City, Missouri, this 29th day of October 1976.



JOHN C. JACKSON
Acting Regional Administrator
U. S. Department of Labor
Labor-Management Services Administration
2200 Federal Office Building
911 Walnut Street
Kansas City, Missouri 64106

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/19/77

877

Mr. William E. Persina
Assistant Counsel
National Treasury Employees Union
1730 K Street, N.W. - Suite 1101
Washington, D.C. 20224

Re: Department of Treasury
IRS Chicago District
Case No. 50-13154(CA)

Dear Mr. Persina:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

Under all of the circumstances, I find that the evidence is insufficient to establish a reasonable basis for the instant complaint. In this connection, it was noted that both the pre-complaint charge and the complaint herein allege that management did not advise the Complainant of a change made on December 10, 1975, regarding the use of the office xerox machine, so that the Complainant could meet and confer with management concerning the change. However, the record reveals that management did indeed meet with the Complainant on December 8, 1975, two days before the scheduled change, and, although the Complainant was informed of the scheduled change, it did not at that time request the Respondent to meet and confer further with it regarding the change or its impact and implementation. Thereafter, on December 15, 1975, the Complainant, for the first time, requested that the Respondent meet and confer with it concerning the already implemented change.

Under these particular circumstances, I find that no violation took place when the Respondent implemented its proposed change on December 10, 1975. See U.S. Department of Air Force, Norton Air Force Base, A/SLMR No. 261.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE (IRS),
AND IRS CHICAGO DISTRICT,
CHICAGO, ILLINOIS,

Respondent

and Case No. 50-13154(CA)

NATIONAL TREASURY EMPLOYEES UNION (NTEU),
AND NTEU CHAPTER 010,

Complainant

The complaint in the above-captioned case was filed on May 21, 1976, in the office of the Chicago Area Administrator. It alleges a violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended. The complaint has been investigated and carefully considered. It appears that further proceedings are not warranted inasmuch as a reasonable basis for the complaint has not been established, and I shall therefore dismiss the complaint in its entirety in this case.

It is alleged that the Respondent violated Sections 19(a)(1) and (6) of the Order by its failing to properly consult and confer with the Complainant prior to changing the policy regarding employee use of the office photocopying machine at the South Area Office of the activity, thus altering working conditions at that office.

It is the Respondent's position that it had no obligation to negotiate its decision to change the photocopying procedures because no adverse impact on unit employees resulted in such a procedural change. The Respondent further maintains that any adverse effects which perhaps could in the future flow from the change in question may be subject to the terms and conditions contained in the negotiated grievance procedure provided for in the negotiated agreement ("Multi-District Agreement between Internal Revenue Service and National Treasury Employees Union," effective August 3, 1974). Respondent further claims that even if it can be maintained that such a change required prior union consultation, it notified the Complainant's representatives in a December 8, 1975 meeting 1/ of the intended change and that the Complainant did not at that

1/ This special meeting attended by NTEU stewards and representatives of the Chicago District IRS was called by activity management for the purpose of discussing the district's costs for xeroxing, the number and location of xeroxing machines in the district offices, and the length of time it would take to have materials copied when the new procedures were implemented.

time request further discussions on the matter. Such behavior on the part of the Complainant's representatives relieves the Respondent, it is argued, from further negotiations covering this matter prior to its initiation.

Investigation reveals that prior to December 10, 1975 employees of the South Area Office of the Chicago District IRS were free to do their own photocopying. However, in November 1975, the Chicago District Director determined that, because of budgetary limitations, it would be necessary to reduce the district's photocopying costs and this could best be accomplished by streamlining the flow of materials to be photocopied. As a result, subsequent to the December date all copying requests were required to be routed through the Group Manager for prior approval. Photocopying then would be accomplished by a clerk assigned this task. This procedure was scheduled to be implemented in all Chicago District IRS offices on January 2, 1976, and was in fact implemented on or about that date throughout the District excepting the South Area Office.

Based upon the information provided and the investigation of the Area Administrator, I find no reasonable basis established by the Complainant for the finding of a violation in this matter. This determination is based upon an absence of relevant information and/or supporting evidence concerning any possible adverse impact suffered by any of the unit employees. In this the Complainant has failed in its burden of proof. I see the change in itself as insignificant in terms of possible impact upon working conditions and as having no adverse impact on unit employees. Further, I agree with the Respondent in its contention that the multi-district agreement could serve as an appropriate vehicle for relief if, in the future, the presently implemented photocopying procedure results in such adverse impact.

It must be additionally noted that activity management's decision to provide the Complainant with prior notification is not tantamount to an admission that it must engage in prior negotiations, nor should notification be construed to be synonymous with negotiation in this context.

Having considered carefully all the facts and circumstances in this case, including the charge, the complaint and all information supplied in the accompanying Report of Investigation supplied by the Complainant, the complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, LMSA, ATTN: Federal Labor-Management Relations, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than close of business October 14, 1976.

Dated at Chicago, Illinois this 29th day of September, 1976.

Thomas J. Sheehan
Acting Regional Administrator
U. S. Department of Labor, LMSA
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

4/20/77 878

Thomas J. O'Rourke, Esq.
Staff Assistant to the Regional Council
Internal Revenue Service
22nd Floor South
219 South Dearborn St.
Chicago, Illinois 60604

Re: Department of Treasury
Internal Revenue Service
Chicago, District, Illinois
Case No. 50-13149(AR)

Dear Mr. O'Rourke:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings On Arbitrability in the above-named case.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that the matter herein is subject to the negotiated grievance and arbitration procedures in the parties' negotiated agreement.

Accordingly, your request for review seeking reversal of the Acting Regional Administrator's Report and Findings On Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Regional Administrator for Labor-Management Relations, Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Regional Administrator's address is Room 1060, Federal Office Building, 230 S. Dearborn Street, Chicago, Illinois 60604.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
WASHINGTON, D.C. AND CHICAGO DISTRICT,
CHICAGO, ILLINOIS,

Respondent

and Case No. 50-13149(AR)

NATIONAL TREASURY EMPLOYEES UNION
(NTEU) AND NTEU CHAPTER NO. 10,

Applicant

REPORT AND FINDINGS
ON
ARBITRABILITY

The original Application in this proceeding was filed on May 10, 1976 in the Office of the Chicago Area Administrator. An Amended Application in this matter was filed in the Office of the Chicago Area Administrator on June 17, 1976. The Application requests that a Determination on Arbitrability be made. The Application has been investigated and carefully considered and the question before the Assistant Secretary is found to be arbitrable.

Investigation reveals that the initial grievance in this matter was filed on September 25, 1975 and the written final rejection of the grievance was dated January 22, 1976. The request for Arbitration was dated February 17, 1976 and the written final rejection of same was dated March 11, 1976. The initial grievance was filed on behalf of an employee who was not selected to fill a position vacancy. The grievance appears to fall within the ambit of the Multi-District Agreement between the Respondent and the Applicant. 1/

1/ Multi-District Agreement Between Internal Revenue Service and National Treasury Employees Union effective August 3, 1974 for a period of two years and remaining in effect for yearly periods thereafter, unless either party serves the other party with a written notice, at least 120 days prior to the expiration date.

According to Article 35, Section 8 of the Multi-District Agreement, the Applicant has 21 days to request arbitration from the Respondent after the date that the final written rejection of the grievance was "rendered." 2/

Both parties in this instance take opposing views as to the meaning of the word "rendered" in this section of the Multi-District Agreement. The Respondent states that the word "rendered" is the same as the date of issuance (in this case, January 22, 1976). The Applicant feels that the word "rendered" is the same as the date of receipt (in this case, January 26, 1976).

I find that if the word "rendered" is considered to mean the date of issuance, then the Respondent would be correct in refusing the arbitration based on Article 35, Section 8 of the Multi-District Agreement because such a request was untimely filed. However, if the word "rendered" is considered to mean the date of receipt, then the request for arbitration would be timely filed and the matter before me arbitrable.

A dictionary definition of the word "render" is given as, "to transmit to another; to give up; to furnish for consideration, approval, or information." The dictionary definition allows, it appears, for a range of considerations concerning the meaning of the word "rendered" as applied to this context since it implies something of a symmetrical relationship, i.e., one between a "sender" and a "recipient" and suggests a possible continuum of relationships in its meaning.

If unable to specifically define the meaning of the term "rendered" in this instance because of its obvious ambiguity, I find that it is useful to analyze it from a common-sense approach towards labor-management relations. Taking the Respondent's position that if the word "rendered" is to mean the date of issuance rather than the date of receipt, then the Respondent could possibly delay for the full 21-day period before delivering the decision to the Applicant. This would have the result of forcing the Applicant to reply on the same day of receipt. This could also be possible due to a delay in the mail. It would appear that the Applicant should be given a reasonable and fair opportunity to answer or request arbitration. Therefore, I find that for purposes of requesting arbitration within the meaning of Article 35, Section 8 of the Multi-District Agreement,

2/ Article 35, Section 8 of the Multi-District Agreement reads as follows: "Adverse decisions rendered in Step 4 may be appealed to arbitration as provided in Article 36, provided such appeal is made within 21 days of the decisions rendered in Step 4 of Section 7, and provided the Union notifies the Office of the District Director by certified mail of its decision to do so."

a decision is "rendered in Step 4 of Section 7" of said Agreement on the date of its receipt by the union. Since, in the instant case, the Applicant union received the adverse decision rendered in Step 4 of said Agreement on January 26, 1976, and its appeal to arbitration was received by Respondent on February 17, 1976, the first working day following the expiration of the 21-day period, I find the Applicant's appeal to arbitration to have been timely filed within the meaning of Article 35, Section 8 of the Multi-District Agreement.

Respondent further contends that notification of appeals to arbitration by theApplicant must be by certified mail to conform to Article 35, Section 8 of the Agreement and failure to so conform renders an appeal defective and untimely. Inquiry was made of Respondent's representative concerning past practice in this matter and information was provided that Respondent regularly had accepted means of delivery other than certified mail, i.e., personal delivery and regular mail. Viewed in the aforementioned context, I find that the certified mail provision of the Agreement is intended as a means of proof of receipt rather than an absolute requirement of process. Further, I find that the Office of District Director's receipt stamp dated February 17, 1976, and affixed to the face of the Applicant's request for arbitration in the instant case constitutes proof of receipt on a timely basis.

Accordingly, having found Applicant at all times material to have been in substantial conformity with the provisions of Article 35, Section 8 of the Multi-District Agreement between the parties, the matter must be and hereby is found to be arbitrable.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Respondent may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Applicant. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based, andmust be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business November 18, 1976.

Dated at Chicago, Illinois, this 3rd day of November, 1976.

Thomas J. Sheehan
Acting Regional Administrator
U. S. Department of Labor, LMSA
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/21/77

879

Thomas J. O'Rourke, Esq.
Staff Assistant
Office of the Regional Counsel, IRS
219 South Dearborn Street - 22nd Floor
Chicago, Illinois 60604

Re: Department of Treasury
Internal Revenue Service
Chicago District, Illinois
Case No. 50-13148(AR)

Dear Mr. O'Rourke:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability in the instant case.

In your request for review, you contend that the Acting Regional Administrator erred in finding arbitrable the issue of whether or not the Applicant properly "prosecuted" a grievance under Article 35, Section 11, of the parties' Multi-District negotiated agreement. You also allege substantial procedural defects in the instant application including, among other things, untimeliness and improper service which should have precluded the Acting Regional Administrator from considering the merits of the issues raised therein.

In reaching his decision, the Acting Regional Administrator found that the matter involved herein is arbitrable as the Multi-District Agreement of the parties does not define the meaning of "prosecuting" a grievance. After consulting the dictionary with respect to the meaning of "prosecute," the Acting Regional Administrator concluded that to meet its obligation to "prosecute" a grievance the Applicant need only to have followed the grievance procedure in a timely manner from one step to the next, which, in fact, it did.

The original application herein was timely filed on May 10, 1976. While the Activity alleged procedural defects, particularly in the service of such application because it was not served until the amended application was filed, the evidence establishes that it was thereafter served with copies of the original and the amended application. Under these circumstances, I find that the Activity

was not prejudiced by the timing of the service herein, which I find to be sufficient. I find also, for the reasons set forth by the Acting Regional Administrator, that the matter herein is subject to the negotiated grievance and arbitration procedures in the parties' negotiated agreement. I, therefore, conclude that it will effectuate the purposes of the Order for the parties to resolve the issue involved through their negotiated procedure.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Arbitrability, is denied.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, the parties shall notify the Regional Administrator, Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Regional Administrator's address is Room 1060 Federal Office Building, 230 S. Dearborn St., Chicago, Illinois 60604.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
WASHINGTON, D. C. AND CHICAGO DISTRICT,
CHICAGO, ILLINOIS,

Respondent

and

Case No. 50-13143(AR)

NATIONAL TREASURY EMPLOYEES UNION (NTEU)
AND NTEU CHAPTER NO. 10,

Applicant

REPORT AND FINDINGS
ON
ARBITRABILITY

The Application in this proceeding was filed on May 10, 1976 in the Office of the Chicago Area Administrator. The Amended Application was filed on May 28, 1976, in the Office of the Chicago Area Administrator. The Application requests that a determination for a Decision on Arbitrability be made. The Application has been investigated and carefully considered. From the information contained in the Application, the matter at hand is considered to be arbitrable.

The issue before the Assistant Secretary is whether or not the Applicant provided the Respondent with adequate information in order to properly "prosecute" a grievance under Article 35, Section 11 of the Multi-District Agreement. 1/

Investigation reveals that the initial grievance was filed on behalf of a group of unit employees between February 11, 1975 and February 18, 1975, with various group managers of the Respondent. The grievance was based upon the alleged improper working conditions of certain Chicago District Office employees. The grievance was processed through all of the Steps as indicated in the negotiated agreement between the parties. The Respondent denied the grievance at the final Step on December 5, 1975. The request for arbitration was made on December 23, 1975, and this request was denied by the

1/ Multi-District Agreement Between Internal Revenue Service and National Treasury Employees Union effective August 3, 1974 for a period of two years and remaining in effect for yearly periods thereafter, unless either party serves the other party with a written notice, at least 120 days prior to the expiration date.

Respondent on March 19, 1975. The Respondent's reason for refusing the request for arbitration was that the Applicant had not provided the information necessary in order to properly "prosecute" the grievance under Section 11 of the Multi-District Agreement. 2/ It is the position of the Applicant that a determination should be made by the Assistant Secretary on whether or not it has properly prosecuted the grievance so that arbitration may be permitted.

Investigation reveals that the Multi-District Agreement does not address itself to either qualitative or quantitative standards as to the kind or amount of information that must be provided by the grievant when processing a grievance. Common dictionary definitions of the word "prosecute" include to pursue until finished, to pursue for redress or punishment of a crime or violation of law in due legal form before a legal tribunal, to institute legal proceedings with reference to a claim, to institute and carry on a legal suit or prosecution, etc. The dictionary definition of the word "prosecute" does not indicate any type of standards of information to be provided when engaged in prosecuting something. It rather concerns the act of carrying on or pursuit of a matter.

Based upon the information provided, especially the fact that the Applicant has actively pursued the grievance in this matter through its several steps and then in a timely fashion filed a request for arbitration, I find that the grievance in this matter is arbitrable. To allow the Respondent to arbitrarily set up unilateral standards of evidence would give an unfair advantage to the Respondent. Further, it would lead to a negation of the negotiated grievance procedure in that the Respondent could — on a case-by-case basis — establish for the grievant limits to the Applicant's presentation of the relevant issues. As noted above, no specific standards of evidential adequacy exist in this matter according to the Multi-District Agreement. Therefore, I cannot agree with the Respondent's restrictive definition of the word "prosecute." Rather, it would be more appropriate for the arbitrator to decide this threshhold question before going on to the merits of the case as presented in the grievance. It should be made clear here that I am not passing on the merits of the grievance, nor on whether the matters associated with the grievance are properly grievable under the terms and provisions of the negotiated agreement. Rather, I am answering in the affirmative the limited question placed before me, i.e., is the Respondent's denial of the grievance at the fourth and final stage of the grievance procedure

2/ Article 35, Section 11 of the Multi-District Agreement states: "Failure on the part of the aggrieved or the Union to prosecute the grievance at any step of the procedure will have the effect of nullifying the grievance. Failure on the part of the Employer to meet any of the requirements of the procedure will permit the aggrieved or the Union to move to the next step."

subject to arbitration. I reject the Respondent's contention that it can so define the essential term "prosecute" so as to effectively curtail an active technically correct pursuit of the grievance in question.

Having considered carefully all the facts and circumstances in this case, including the initial grievance, the Application and all information supplied in the accompanying Report of Investigation supplied by the Applicant, the matter contained herein is considered to be arbitrable.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, the Respondent may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Applicant. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based, and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, 200 Constitution Avenue, N.W., Washington, D.C. 20216 not later than the close of business

Dated at Chicago, Illinois this

R. C. DeMarco, Regional Administrator
United States Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139, Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY FOR ADMINISTRATION
WASHINGTON, D.C. 20210
4/21/77

880

Mr. Juan Carbriales
President, American Federation of
Government Employees
Local 3060, AFL-CIO
214 East Pierce
Harlingen, Texas 78550

Re: International Boundry and Water
Commission
Harlingen, Texas
Case No. 63-6919(CA)

Dear Mr. Carbriales:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in this matter are unwarranted inasmuch as there is insufficient evidence to establish a reasonable basis for the instant complaint.

Accordingly, and noting that matters raised for the first time in the request for review (i.e., evidence as to further alleged discriminatory treatment of employees) will not be considered by the Assistant Secretary (see Report On A Ruling, No. 46, copy attached), your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5261 Kansas City, Missouri 64106

November 8, 1976

In reply refer to: 63-6919(CA)
International Boundary and
Water Commission, Harlingen
Texas/AFGE Local 3060, (AFL-CIO)

Mr. Juan Cabriales, President
AFGE Local 3060 (AFL-CIO)
214 East Pierce
Harlingen, Texas 78550

Dear Mr. Cabriales:

The above-captioned case, alleging violations of Sections 19(a)(1) and (2) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(è) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the complainant.

In this regard, you have offered no evidence to establish that the International Boundary and Water Commission discriminated against union members in its selection of a non-union employee for promotion to a Levee Patrolman position on April 12, 1976.

Based upon all of the foregoing, I hereby dismiss the complaint in this matter in its entirety.1/

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, United States Department of Labor, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than close of business, November 23, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator for
Labor-Management Services Administration

1/ In view of the decision herein, I find it unnecessary to rule on the Respondent's motion to dismiss.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
4/21/77

881

Mr. Hilary Sheply
Acting Regional Administrator, LMSA
U.S. Department of Labor
Gateway Building - Room 14120
3535 Market Street
Philadelphia, Pennsylvania 19104

Re: Headquarters, U.S. Army Materiel
Development and Readiness Command
Alexandria, Virginia
Case No. 22-06872 (CA)

Dear Mr. Sheply:

This is in connection with the request for review filed by the National Federation of Federal Employees, seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case.

As the request for review raises issues that appear to be relevant, but were not addressed by the Acting Regional Administrator, I am hereby remanding the subject case to you for further investigation and subsequent appropriate action.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
14120 GATEWAY BUILDING
3535 MARKET STREET
PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

October 5, 1976

Lisa R. Strax
Staff Attorney
National Federation of Federal Employees
1016 16th Street, N.W.
Washington,D.C. 20036
(082847)

Re: Headquarters, U.S. Army Materiel
Development and Readiness Command
Case No. 22-6872(CA)

Dear Ms. Strax:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You allege that the Respondent violated Sections 19(a)(1) and (6) of the Executive Order by violating an agreement with the National Federation of Federal Employees, Local 1332 relating to a freeze on hiring and promotions. The investigation revealed that you contend that during August 1975 the Respondent, during negotiations relating to a reorganization, agreed 1) to consult with the Union on vacant positions determined to be critical which it (the Respondent) desired to fill by permanent promotion or lateral reassignment and 2) to consult with the Union prior to filling vacant positions by permanent promotion or reassignment. The Respondent denies that it made such an agreement. You further contend that the alleged agreement was violated notably by the hiring of a Mr. Rickey (or Richey) and a Mr. Verbeke on or about January 30, 1976 without the Union having been consulted.

The Federal Labor Relations Council has established that the determination to fill vacancies or, conversely, not to fill vacancies, is a retained management right under Section 12(b) of the Order. 1/ It has further established that the reservation of Section 12(b) right is "mandatory and may not be relinquished or diluted." 2/ In view of this, I am of the opinion that

1/ National Council of OEO Locals, AFGE, AFL-CIO and Office of Economic Opportunity, FLRC No. 73A-67.
2/ Tidewater Virginia Federal Employees Metal Trades Council and Naval Public Works Center, Norfolk,Virginia, FLRC No. 71A-50.

even if the Respondent had made the agreement which you allege, such agreement would have constituted a waiver of Section 12(b) retained rights. Inasmuch as the Respondent cannot agree to such a waiver, any agreement constituting such is contrary to the Order and, therefore, unenforceable.

Based on the foregoing, I am hereby dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than close of business October 20, 1976.

Sincerely,

Eugene M. Levine
Acting Regional Administrator

cc: Mr. Philip Barbre
Chief, Headquarters Civilian Personnel Office
U.S. Army Materiel Development and Readiness Command
5001 Eisenhower Avenue
Alexandria,Virginia 22333

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

APR 22 1977

882

Mr. Thomas Angelo
Associate General Council
National Treasury Employees Union
1730 "K" Street, N.W. - Suite 1101
Washington, D. C. 20006

Re: Internal Revenue Service
Des Moines District Office
Case No. 62-4760 (CA)

Dear Mr. Angelo:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of certain portions of the instant complaint, which alleges violations of Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in this matter are unwarranted. Thus, in respect to allegations D and E of the instant complaint, you assert that the allegations contained therein raise issues sufficient to warrant a hearing. However, the bare allegations contained in the instant complaint with regard to these issues are devoid of any supporting evidence. It has long been established policy that to warrant further proceedings a complaint must be supported by evidence and that the burden of proof is on the Complainant at all stages of the unfair labor practice proceedings. See, in this regard, Section 203.6(e) of the Assistant Secretary's Regulations. With regard to allegation B of the instant complaint, I find, in agreement with the Regional Administrator, that Section 19(d) of the Order precludes further proceedings under Section 19(a) of the Order.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the above-noted portions of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

July 20, 1976

Mr. Thomas Angelo
Associate General Counsel
National Treasury Employees Union
1730 K Street, N.W., Suite 1101
Washington, D.C. 20006

Re: 62-4760(CA)

Dear Mr. Angelo:

The above-captioned case alleging violations of Sections 19(a)(1), (2) and (6) of Executive Order 11491, as amended, has been investigated, and considered carefully.

It does not appear that further proceedings are warranted in relation to Charges "B" through "E" of your complaint, for reasons set forth hereinafter.

In Charge B, you alleged that IRS violated Sections 19(a)(1) and (2) of the Order by suspending three union officers. Without ruling on the merits of this issue, it appears that Section 19(d) of the Order is applicable. The only apparent difference between the "facts", or "issues" presented in the grievance procedure and the complaint procedure is the form of regulatory instrument allegedly violated and the determination sought with regard to precisely the same incident. If your argument that Section 19(d) does not apply were to be accepted, virtually any grievance could be raised under the negotiated procedure to determine whether or not the contract had been violated, and under the complaint procedure to determine whether or not the Order had been violated. In my view, Section 19(d) prevents this double "bite of the apple."

I am, therefore, dismissing in its entirely Charge B of your complaint.

In Charge C of your complaint you have alleged that the Respondent violated Sections 19(a)(1), (2), and (6) of the Order by proposing to local union representatives that management would make certain concessions concerning a pending grievance if the NTEU would agree to withdraw the grievance. It is your contention that management was thus attempting to create the appearance of granting "unilateral relief." My review of all information submitted in the investigation of this complaint has caused me to conclude that the offer made by CPO Kenworthy under the above described circumstances was intended to effectuate a solution of the grievance, subject to acceptance or rejection by union representatives,

and nothing more. Your brief provided no basis for further consideration of the matter.

I am, therefore, dismissing Charge C of your complaint in its entirety.

In Charge D, you allege that the Respondent violated Sections 19(a)(1), (2) and (6) of the Order by denying the local president the right to leave his work area to speak to a grievant and by requiring that he provide an "itinerary" of his work activities for a period of thirty days. Contrary to your allegation, my investigation shows that the Respondent was within its rights in so doing inasmuch as the negotiated aggreement speaks to the issue, and the Respondent had held prior discussions with the president regarding apparent deficiencies in accomplishing his work load. You indicated you disagreed with some of the "facts" presented by the Respondent with regard to this issue but failed to provide any "facts" to the contrary. Based on case precedent, there is no reason to believe that a basis for the complaint in light of 19(a)(1) alone, or 19(a)(1) and (2) exists. You have again failed to meet the Complainant's burden of proof.

Consequently, I am dismissing in its entirety Charge D of your complaint.

In Charge E, you allege that the local president's request for a reduction in his work load was refused by his supervisor in violation of Sections 19(a)(1), (2) and (6) of the Order, and again I find that you have failed to sustain your burden of proof. Thus you have submitted no evidence to suggest that the amount of official time granted the president for conducting union business based on Article 6 of the Multi-District Agreement has hitherto been unreasonably restricted and there is no indication of a change of any kind in his union-related duties which would have the effect of making the amount of time currently allotted unreasonable. Apparently, his supervisor merely declined to change the status quo and without any significant impetus for changing it, I see no reason to conclude that the denial of the president's request may have constituted a violation of the Order.

Consequently, I am dismissing Charge E of your complaint.

May I remind you that in every case the parties to a complaint are under an affirmative obligation to submit to the Area Administrator any and all facts at its disposal which might lead to an early disposition of the complaint. Both you and counsel for the Respondent advised a St. Louis Area Office staff member that several of your complaints had been settled but you refused to withdraw them. In both Charges D and E of the complaint you disputed the Respondent's "facts", yet you failed to provide any contradictory evidence. Apparently, you are simply seeking the vindication of your position in these matters, as is, perhaps, the Respondent. These actions do not effectuate the purposes of the Order, and I do not condone them.

Your allegations with regard to Charge A of the complaint will be processed upon completion of actions ensuing from this dismissal.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business August 4, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator
Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

April 25, 1977

883

Herbert Collender, President
American Federation of Government
Employees, AFL-CIO
Local 1760
Corona, Elmhurst, New York 11373

Re: HEW, SSA, Northeastern
Program Service Center
Case No. 30-07317(CA)

Dear Mr. Collender:

This is in connection with your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, alleging violations of Section 19(a) (1), (2), (5) and (6) of Executive Order 11491, as amended.

I find that your request for review is procedurally defective since it was filed untimely. In this regard, it was noted that on March 23, 1977, you were granted an extension of time to file a request for review in the instant case. As you were advised therein, a request for review of the Regional Administrator's decision has to be received by the Assistant Secretary not later than the close of business March 31, 1977. Your request for review, dated March 30, 1977, was received subsequent to that date and, therefore, was clearly untimely.

Accordingly, the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

March 4, 1977 In reply refer to Case No. 30-07317(CA)

Herbert Collender, President
Local 1760, AFGE, AFL-CIO
PO Box 626
Corona, Elmhurst, New York 11373

Re: HEW, SSA, Northeastern Program Service Center

Dear Mr. Collender:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. You contend that Respondent violated Sections 19(a)(1) and (6) of the Order when its representative refused to meet and confer with the designated representatives of AFGE Local 1760 concerning personnel practices and policies and other matters affecting the general working conditions of bargaining unit employees.

The following facts are undisputed:

1. Prior to mid 1974, Respondent's organizational structure had a branch structure, each branch performing a separate job function. The branches were entitled Post Entitlement, Claims, Record Maintenance, Reconstruction, Quality Appraisal, Fiscal Audit, Fiscal Management and Personnel and Management. Each Branch Manager was responsible for supervising the operations of the employees solely within a single branch.

2. AFGE Local 1760, in accordance with its Constitution, had an elected Vice-President for each of the Activity's branches.

3. A reorganization took place in mid 1974 resulting in the elimination of all of the branches except the Claims Branch. A "module" system was implemented. With the implementation of this reorganization, i.e., from the traditional branch structure to a module structure, the authority formerly vested in several branch managers also changed.1/

4. Prior to April 1976, the "module" structure consisted of seven divisions with numerous modules within each division. In April 1976, the "module" structure was changed again. The Divisions were eliminated and two Processing Branches, each with three sections were established. Each section includes several modules. The Claims Branch was also eliminated and its employees became a part of one of the Processing Branches.2/

5. Under the former branch structure, AFGE Local 1760 had an elected Vice-President for each branch who was responsible for dealing with a single branch manager concerning solely the function of that particular branch. With the implementation of the module system under the Division structure, an unwritten understanding existed among the parties whereby a designated Vice-President of AFGE Local 1760 met with a designated Division Manager.3/ With the im-

---

1/ A module is a self sufficient work unit consisting of a number of employees from the various former branches each of whom is capable of performing more than one function.

2/ Under the current structure, Processing Branch II consists of employees in addition to others, from the former Post Entitlement Branch, Claims Branch, Record Maintenance Branch and Reconstruction Branch.

3/ This practice was discontinued sometime during 1975.

plementation of the changes effective in April 1976, the Process Branch Manager became the designated management representative of the employees within a particular branch.

6. On July 15, 1976, six Vice-Presidents of Local 1760 jointly sent a memorandum to the manager of Processing Branch II requesting that he meet with them as a group to discuss specific items.

7. On July 28, 1976, the manager of Processing Branch II responded agreeing to meet with a designated representative contending that the current collective Bargaining Agreement does not require that he meet with six representatives of the Local.

8. On July 30, 1976, Complainant filed its pre-complaint charge.

Complainant contends that each of its elected Vice-Presidents is knowledgeable in only one specific area of Respondent's operations and does not have the knowledge to consult individually with a Processing Branch Manager who is knowledgeable in several areas.

Respondent contends that it has not refused to meet and confer with Complainant but rather, has sought to balance the number of representatives from each side attending the meeting.

In its letter of July 28, 1976, wherein it responded to Complainant's request for the meeting, Respondent stated, in part,

> "... please be advised that I am available to meet with representatives of Local 1760 and discuss those matters that are of concern to the local. I find nowhere in the Master Agreement or the Executive Order the requirement that I am obligated to meet with six representatives of the local.
>
> "Therefore, the Local should designate a representative to meet with me for the purpose of discussing those items listed in the memorandum of July 15, 1976 ..."

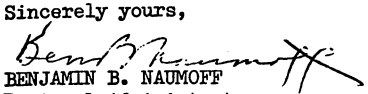
The Agreement currently in effect does endorse the principal that meeting between a reasonable number of participants, both management and Local officials, are good channels for productive communication; however, no evidence has been adduced which would form a basis to conclude that the Agreement designates or determines the number of participants. Moreover, no evidence has been adduced that a past practice exists which would require that a Processing Branch Manager meet with the Local's six Vice-Presidents.

Under the circumstances, I conclude that Respondent has not violated the Order. I am, therefore, dismissing the complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business March 21, 1977.

Sincerely yours,



BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

Mr. Henry H. Robinson
Assistant Counsel
National Treasury Employees Union
8301 Balcones Drive - Suite 315
Austin, Texas 78759

884

Re: Internal Revenue Service
Southwest Region
Austin, Texas
Case No. 63-6477(CA)

Dear Mr. Robinson:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

It is the Complainant's position that the Respondent unreasonably shifted its position with regard to the negotiability of certain of the Complainant's proposals during the course of negotiations with regard to open landscaping, and that the Respondent's actions concerning these proposals were dilatory and evasive and amounted to bad faith bargaining.

In agreement with the Regional Administrator, I find that a reasonable basis for the complaint has not been established and that, consequently, further proceedings in this matter are unwarranted. Thus, having reviewed the entire record in this matter, I find that the evidence is insufficient to establish a reasonable basis for the allegation that the Respondent's conduct herein amounted to bad faith bargaining.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

March 18, 1977

In reply refer to: 63-6477(CA)
Treasury/Internal Revenue Service,
Southwest Region, Washington, D.C./
National Treasury Employees Union
& NTEU Chapter 91

Mr. Vincent L. Connery
National President
National Treasury Employees Union
& NTEU Chapter 91
1730 K Street, N.W., Suite 1101
Washington, D.C. 20006

Dear Mr. Connery:

The above-captioned case, alleging violations of Sections 19(a) (1) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted, inasmuch as a reasonable basis for the Complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant.

The Complainant contended that management unreasonably shifted positions on the negotiability or non-negotiability of the union proposals and this constituted dilatory and evasive tactics and bargaining in bad faith.

The Respondent maintains that since they never indicated Complainant's proposals were negotiable, their later determination that they were not, cannot be found to constitute a shift in their position. Further, any interference with the negotiating process resulting from this act would be so slight as to fall within the de minimus concept.

It should be noted that on January 6, 1976, Respondent just outlined their position on the Complainant's proposals. Their change in position was communicated to Complainant on January 28, 1976. In my opinion, this short period of time does not indicate dilatory and evasive tactics or bad faith bargaining beyond the de minimus concept.

Based upon all the foregoing, I hereby dismiss the Complaint in this matter in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than close of business April 4, 1977.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator
Labor-Management Services Administration

Mr. Raymond Boothe
National Representative
American Federation of Government
Employees, AFL-CIO, District 14
8020 New Hampshire Avenue
Hyattsville, Maryland 20783

Re: Smithsonian Institution
National Zoological Park
Washington, D. C.
Case No. 22-7386 (CA)

Dear Mr. Boothe:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a)(1), (5) and (6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

CERTIFIED MAIL NO. 659547

PHILADELPHIA, PA 19104
TELEPHONE 215-597-1134

October 19, 1976

Mr. Raymond Boothe
National Representative
American Federation of Government Employees
AFL-CIO, District 14
8020 New Hampshire Avenue
Hyattsville, Md. 20983

Re: Smithsonian Institution
National Zoological Park
Case No. 22-7386(CA)

Dear Mr. Boothe:

Your unfair labor practice complaint in the above-captioned case alleging violations of Section 19 of Executive Order 11491, as amended, (hereinafter the Order) has been investigated and carefully considered. For the reasons discussed below, it does not appear that further proceedings are warranted.

The complaint specifically alleges that the Smithsonian Institution (hereinafter the Respondent) violated Sections 19(a)(1),(5) and (6) of the Order by its alleged refusal to consult, confer or negotiate as required by the Order with respect to its decision of December 1975 to abolish the "Paint Shop" at the National Zoological Park in Washington, D.C. and to reassign the two employees, formerly assigned therein, to the "Mason Shop".

The Area Administrator's investigation of the case disclosed that on or about December 3, 1975, Mr. Emanuel Petrella, Respondent's representative, delivered a memorandum to the Union representative advising that effective Monday, December 8, 1975 the "Paint Shop" would be abolished and the employees would be transferred to the Mason Shop. On December 9, 1975, representatives of the Union met with Mr. Petrella to discuss the Respondent's alleged refusal to negotiate as required concerning the proposed changes. No agreement was reached by the parties as to the negotiability of the changes. The Respondent's position was that its decision was non-negotiable. A second meeting failed to resolve the matter and on or about January 5, 1976, Mr. Roger Thomas, President, Local 2463 sent a memorandum to Mr. Edward Kohn, Deputy Director, entitled "Subject: Grievance: Violation of Executive Order (11491, 11636, 11838) Article 4, Section 10, Article 3, Section 3 of the negociated /sic/

agreement between Local 2463 and the Smithsonian Institution, NZP. In this memorandum, Mr. Thomas charged that the Respondent's failure to consult with respect to the abolition of the "Paint Shop" constituted an unfair labor practice.

Mr. Kohn answered Mr. Thomas' memorandum by memorandum dated January 13, 1976, in which he stated that his response to the Union's grievance was being submitted in accordance with the third step of the negotiated grievance procedure, 1/ and advised that management's decision was that the matter was non-negotiable and that there had been no violation of the contract or the Executive Order.

He further stated that the Union had three days in which to request that the grievance be forwarded to the Under Secretary for resolution consistent with Step 4 of the Grievance Procedure. No further action was taken by the Union until April 27, 1976 when it filed an unfair labor practice charge against the Respondent on the matter. You contend that the grievance procedure was not invoked and that the Union's actions prior to April 27, 1976 were only informal pre-complaint discussion with the Respondent.

After careful consideration of the facts and evidence submitted by the parties in the case, I find that the Union's January 5, 1976 memorandum constituted a raising of the issue of the Respondent's alleged refusal to consult, confer or negotiate on the abolition of the Paint Shop and reassignment of the employees under the negotiated grievance procedure.

Section 19(d) of the Order provides that an issue, which is by its own nature actionable under either a grievance procedure or the unfair labor practice procedure as contained in Section 19 of the Order, may be raised under either procedure, but not under both. Since the matter has been raised under the negotiated grievance procedure, you are barred by Section 19(d) of the Order from raising it under the unfair labor practice complaint procedure.

1/ "Step 3. If the grievance is not satisfactorily settled, the aggrieved employee or the Union may, within ten (10) calendar days after the date of the decision by the supervisor in Step 2 above, submit the grievance in writing to the Director, NZP. The aggrieved employee or the Union may request a personal presentation before the Director or his designee. The Director, NZP, shall render his decision in writing, including a copy to the Union, within ten (10) calendar days after his receipt of the personal presentation, or receipt of the written grievance."

Moreover, the investigation fails to reveal any request by the complainant to request discussion or negotiations over the adverse impact on employees in the Paint Shop or that the Respondent refused to discuss such impact. The thrust of the objections of complainant was to the decision to abolish the Paint Shop. For this reason too, I would find that the complainant has failed to show a reasonable basis for the issuance of a notice of hearing.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business November 3, 1976.

Sincerely,

Eugene M. Levine
Acting Regional Administrator

cc: Mr. Ronald E. Becker
Assistant Director of Personnel
The Smithsonian Institution
900 Jefferson Drive, S.W.
Washington,D.C. 20560

Mr. Dwight Bowman
President, AFGE, Local 2463
Room 11A-Museum of Natural History
Smithsonian Institution
Washington,D.C. 20560

Robert J. Canavan, Esq.
General Counsel
National Association of Government
Employees
285 Dorchester Avenue
Boston, Massachusetts 02127

Re: Department of the Air Force
Otis Air Force Base, Massachusetts
Case No. 31-09908(RO)

Dear Mr. Canavan:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Objections setting aside the runoff election in the above-named case.

The Regional Administrator concluded that the mail-ballot runoff election held on July 14, 1976, should be set aside based on an objection filed by the American Federation of Government Employees, AFL-CIO, Local 3004 (AFGE). In its objection, the AFGE alleged that the National Association of Government Employees (NAGE), prior to the completion of the election:

> Totally misrepresented facts involving a reduction in force among this unit of employees. A leaflet was distributed giving these employees the impression that the NAGE had prevented a proposed R-I-F involving 16 positions. This erroneous and deceptive material had a beneficial bearing on the outcome of the election and we feel this impaired the employees' ability to vote intelligently on the issue. . . . AFGE did not have sufficient time to respond and counteract this misrepresentation of fact. It should be noted that the Activity has since issued the R-I-F notice in question to the employees involved.

The Regional Administrator determined that the above noted leaflet, distributed during the election, contained a substantial misrepresentation of fact, even though he agreed that the NAGE represented the facts concerning the RIF that were given it by a Congressman, whose aid and intercession regarding such reductions it sought. Applying the principles of the private sector doctrine set forth in Hollywood Ceramics Co., Inc., 140 NLRB 221, he found that the innocent misrepresentations could reasonably be expected to have a significant impact on the election.

Under all of the circumstances, I disagree with the conclusion of the Regional Administrator, Thus, the evidence herein establishes that there was, in fact, no misrepresentation made by the NAGE in the flyer to its constituents. In this connection, it is undisputed that the NAGE's request to its Congressman seeking his aid in preventing the impending reduction-in-force was made to and pursued by the Congressman, who received certain information from the Air Force and conveyed it to the NAGE, which published it to its constituents. There is no indication that the information, as reported at that time, was false, and only subsequent events proved it to be erroneous. Accordingly, in my view, no misrepresentation was published by the NAGE which warrants setting aside the results of the election herein.

Accordingly, your request for review, seeking reversal of the Regional Administrator's action setting aside the runoff election in the subject case, is granted and the Regional Administrator is directed to cause an appropriate certification to be issued.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

BEFORE THE [illegible]

Department of the Air Force
Otis Air Force Base
Massachusetts

Activity

and

American Federation of Government Employees, AFL-CIO
Local 3004

Petitioner

and

National Association of Government Employees, Local R1-191

Intervenor

CASE NO. 31-09908(I

REPORT AND FINDINGS
ON
OBJECTIONS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on June 23, 1976, a run-off election by secret ballot was conducted by mail under the supervision of the Area Administrator, Boston. Massachusetts. Ballots were mailed to all eligible voters on Wednesday, June 30, 1976 and were counted on Wednesday, July 14, 1976.

The results of the election, as set forth in the Tally of Ballots, are as follows:

Approximate number of eligible voters	39
Votes cast for American Federation of Government Employees, AFL-CIO, AFGE Local 3004	9
Votes cast for National Association of Government Employees, NAGE Local R1-191	29
Valid votes counted	38
Challenged ballots	0
Valid votes counted plus challenged ballots	38

The outcome was not affected by any challenged ballots.

Timely objections to conduct improperly affecting the results of the election were filed on July 21, 1976 by the American Federation of Government Employees, (AFGE). The objections are attached hereto as APPENDIX A.

In accordance with Section 202.20(c) of the Regulations of the Assistant Secretary, the Area Administrator has investigated the objections. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusions with respect to each of the objections involved herein:

OBJECTION NO. 1

AFGE contends that the National Association of Government Employees (NAGE), prior to the completion of the election, "totally misrepresented facts involving a reduction-in-force among this unit of employees. A leaflet was distributed giving these employees the impression that the NAGE had prevented a proposed R-I-F involving 16 positions. This erroneous and deceptive material had a beneficial bearing on the outcome of this election and we feel this impaired the employees' ability to vote intelligently on the issue. ... AFGE did not have sufficient time to respond and counteract this misrepresentation of fact. It should be noted that this activity has since issued the R-I-F notices in question to the employees involved."

The NAGE response to this objection is attached hereto as APPENDIX B. The NAGE admits mailing to all firefighters on July 6, 1976, an undated letter signed by NAGE National President Kenneth Lyons, which says in pertinent part, "I am happy to be able to tell you that the proposed RIF to become effective in September of 1976, has been cancelled."1/ The letter reports that this information was received from Congressman Studds.

The ballots in this election were counted on July 14, 1976. The Activity reports that "On 16 July 1976, ten (10) employees of the Base Fire Department were notified of a Reduction-In-Force with an effective date of 14 September 1976."

The Assistant Secretary has affirmed the use of the standards set forth in Hollywood Ceramics Co., Inc., 140 NLRB 221, for evaluating campaign propaganda to determine whether an election should be set aside. See Army Material Command, Army Tank Automotive Command, Warren, Michigan, A/SLMR No. 56.

The standards set forth in the Hollywood Ceramics case have been summarized as follows: "(A)n election should be set aside only where there has been a

1/ It is uncontested that prior to the mailing of ballots on June 30, 1976, the fire fighters had been notified of an impending reduction-in-force.

misrepresentation or other similar campaign trickery which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election." (Emphasis added.)

That the information in the letter distributed by the NAGE was inaccurate is shown by subsequent events. Indeed, the NAGE does not deny that the letter it mailed contained a substantial misrepresentation of fact. It presents evidence in the form of a letter from Congressman Studds which supports its position that it innocently misrepresented the facts concerning the reduction in force and that it distributed the letter in good faith reliance on the information it obtained from Congressman Studd's office. The test, however, is not whether the misrepresentation was deliberate or not, but whether it may reasonably be expected to have a significant impact on the election.

Based upon the foregoing, I conclude that the letter contains a gross misrepresentation of a material fact which unit employees would be unable to evaluate and which could reasonably be expected to interfere with the free choice of the employees. Thus, the letter seeks to establish that NAGE was instrumental in preventing a RIF which had already been announced to employees. There is so question that the impending RIF was of great concern to the employees, some of whom would suffer possible economic loss as a result of any RIF. Moreover, the employees could scarcely be expected to have any other independent knowledge with which to evaluate the statements contained in the letter. Accordingly, I conclude that the gross misrepresentation could reasonably be expected to affect the outcome of the election. In this regard, the AFGE points to the results of the initial election where the AFGE had 16 votes, the NAGE had 14, and the IAFF had 8. It argues that the results of the run-off election (NAGE 29, AFGE 9) substantiate its allegation as to the influence of the letter on the outcome of the election.

There remains the question of whether AFGE had sufficient time to make an effective reply. NAGE asserts that there was sufficient time to reply. AFGE states:

> "This letter, as NAGE has indicated in their response to the objections, was mailed to the Firefighters on July 6th, and received by them either the 7th or 8th of July. AFGE did not become aware of this letter until Saturday, July 10th. The majority of the ballots had been returned to the activity by this time, therefore,

> the impact of any rebuttal, particularly involving a Congressman's statement of elimination of a RIF, which would have taken considerable review and research, would not have been timely."

An independent examination by the Area Office of the return envelopes used in the run-off mail ballot disclosed the following: 12 ballots were returned in envelopes with postmarks dated prior to July 6th; 2 ballots were returned in envelopes with postmarks of July 8th; 1 ballot was returned in an envelope postmarked July 9th; 1 was postmarked July 10th; and 2 were postmarked July 12th. One postmark was indecipherable but had been stamped by hand when received at the Civilian Personnel Office (the place where ballots were to be returned) with the date July 8th. The remaining ballots bore no postmark and were delivered to the CPO personally. Upon receipt of these ballots they were date stamped in the CPO. An examination of these date stamps disclosed the following: 3 ballots were received on July 2nd; 5 ballots were received on July 6th; 3 ballots were received on July 7th; 1 ballot was received on July 8th; 2 ballots were received on July 12th; 2 ballots were received on July 13th; and 1 ballot was received on July 14th. Two ballots bore neither a postmark nor a hand stamp.

It is impossible to definitely determine with any degree of accuracy the actual date of receipt of the disputed letter by the voters or the date on which AFGE had knowledge of its existence. Given the inherent problems existing with the mail service, it would be an effort in futility to attempt to analyze all the possibilities, i.e., the number of voters receiving the disputed letter prior to voting versus the number of voters AFGE may have been able to reach had it chose to respond to the letter.

Evidence adduced discloses that a substantial number of voters (18) had not mailed or hand delivered their ballots on the date the letter was mailed. Moreover, eleven (11) of these employees did not mail or hand deliver their ballot until July 9, 1976 or later. Assuming arguendo that AFGE had knowledge of the distribution of the letter during the morning of July 8, 1976 (Thursday), ascertained the truthfulness of the statement on that same day and printed and mailed a reply on July 9, 1976 (Friday), it would be impossible to definitely ascertain when such reply would have been received by the eligible voters. Assuming one day service, such reply would have been received by eligible voters on July 10, 1976 (Saturday). A more reasonable approach would be to assume two day service and, hence, eligible voters would not receive such reply until July 12, 1976. Despite the above, it is not unreasonable to assume that it would have taken longer for such mail to be received. Evidence adduced discloses 1 ballot was received on July 9th; 1 on July 10th; 4 on July 12th; 2 on July 13th; 1 on July 14th and 2 others were received on a date which could not be ascertained. By establishing a uniform period for receipt of mail and applying it in different situations to both the receipt of the NAGE letter and the receipt of any reply by AFGE, several other possibilities can be established.

Notwithstanding the above, the opportunity for rebuttal is conditioned not only on adequate time for a response but also on the ability of the employees and the contesting labor organization to ascertain independently the truth of the campaign statements in question. Neither the employees nor the AFGE can reasonably be expected to have private knowledge about the status of a reduction in force at Otis Air Force Base. Verification of the accuracy of NAGE's statement could only be obtained by resort to the same sources used by the NAGE; but, as was noted above, it appears that even the Congressman who passed the information on to the NAGE was involved in an innocent misrepresentation of the facts. Accordingly, because of the timing of the mailing of the letter and because its assertions were not susceptible to quick verification, I find that the AFGE did not have an adequate opportunity to prepare and distribute an effective reply.

Based upon the foregoing, I conclude that improper conduct occurred affecting the results of the election. Accordingly, Objection No. 1 is found to have merit.

OBJECTION NO. 2

In a letter dated August 12, 1976, the AFGE said:

> "In conjunction with this letter, Fire Chief Calvin W. Hitchcock's statement during roll call that week "There is no need to change Labor Organizations as NAGE is doing an excellent job in Washington" and he made reference to the prevention of the RIF, added greater impact. We ask that your office find substance to our objections and ask for an investigation into these charges, also that the Firefighters be interviewed relative to our contentions."

This objection was not timely filed in that it was received more than five working days after the tally of the ballots. Additionally, it was supported by no evidence. The Activity submitted a statement signed by the Chief of the Base Fire Department denying that he ever made such a statement.

In light of the untimeliness of this objection, I make no findings concerning the merits of the objection.

Having found Objection No. 1 to have merit, the parties are advised that the election completed on July 14, 1976 is set aside and a rerun election will be conducted as early as possible but not later than 45 days from the date below, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business November 8, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

DATED: October 21, 1976

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

Attach.

Mr. Paul J. Hayes
National Vice President
National Association of
Government Employees
P. O. Box 515
Scott AFB, Illinois 62225

Re: Department of Transportation
FAA, Aircraft Services Base
Oklahoma City, Oklahoma
Case No. 63-6448(GA)

Dear Mr. Hayes:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the Application for Decision on Grievability or Arbitrability in the above-captioned case.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that the application herein was not filed timely pursuant to Section 205.2 of the Assistant Secretary's Regulations. See Report On A Ruling, Nos. 56 and 61 (copies attached).

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the Application for Decision on Grievability or Arbitrability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

November 18, 1976

Re: 63-6448(GA), Department of Transportation, Federal Aviation Administration, Aircraft Services Base, AAC-800, Oklahoma City, Oklahoma, and National Association of Government Employees, Local R8-14

Mr. Paul J. Hayes, National Vice President
National Association of Government Employees
31 Holly Drive
Belleville, Illinois 62221

Dear Mr. Hayes:

Your Application for Decision on Grievability filed pursuant to Section 6(a)(5) of Executive Order 11491, as amended, on March 22, 1976, in the office of the Dallas Area Administrator has been reviewed and considered carefully. The grievance, which is the subject of the Application, was filed on February 24, 1976, pursuant to Article 32, Grievance and Arbitration Procedure, of the parties' negotiated agreement, and alleged that the above-named Activity, on February 9, 1976, assigned only one (1) unit employee on a cross-country trip in violation of Section 1, Article 8, of the parties' agreement. That Section provides, in pertinent part, that "...Work assignments will be subject to safety regulations...."

In accordance with the provisions of Article 32, the Union was provided, by letter of March 11, 1976, a written answer to the grievance stating that, inasmuch as the grievance did not involve the interpretation or application of the negotiated agreement, it was not a matter subject to the negotiated grievance procedure.

Section 205.2(b) of the Regulations of the Assistant Secretary provides that an application must be filed within 60 days after service on the applicant of a final written rejection, expressly designated as such. Although in Chief R. D. Gibson's letter of March 11, 1976, to Local R8-14 President Raymond L. Rich it is stated that the letter constitutes written rejection of the grievance, I do not find that such a statement satisifes the requirements of Section 205.2 of the Regulations.

It is contemplated by the Executive Order that the parties exhaust all remedies available to them before bringing their misunderstandings and disagreements to the Assistant Secretary for decision and/or resolution. For this reason, Section 205.2 requires a final written rejection of the grievance. The investigation discloses that you have not attempted to exhaust the contractual remedies available, i.e., there has been no request that the matter be referred to arbitration. It is noted in this regard that Article 32, referred to above, of the parties' agreement provides that, under the circumstances present herein, the Union has the right to request such a referral. Under the particular circumstances present herein, it is my view that, in the absence of a request for arbitration and an ensuing refusal to so proceed by the Activity, there has not been a final rejection of the grievance as contemplated by Section 205.2 of the Assistant Secretary's Regulations. 1/

Accordingly, I find that the Application has not been filed timely, and it is therefore dismissed. 2/

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other party to the agreement. A statement of service must accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, United States Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business December 3, 1976.

Sincerely,

GORDON E. BREWER
Acting Regional Administrator
Labor-Management Services

Attachment: Service Sheet, LMSA 1139

1/ The evidence reflects no indication by the Activity of any intent to refuse to submit the subject grievance to arbitration for resolution.

2/ In view of the decision reached herein, I am precluded from considering the merits of issue raised in the Application and, accordingly, I make no determination in that regard.

5-23-77

888

Janet Cooper, Staff Attorney
National Federation of Federal Employees
1016 15th Street, N. W.
Washington, D. C. 20036

Re: U. S. Department of Agriculture
Prairie Village Commodity Office
Prairie Village, Kansas
Case No. 60-4629(CA)

Dear Ms. Cooper:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case.

In agreement with the Regional Administrator, I find that there is insufficient evidence to establish a reasonable basis for the complaint. In reaching this disposition, it is noted particularly that on more than one occasion the Area Office inquired as to whether the Complainant had supporting evidence with respect to its allegation herein that Sections 19(a)(1) and (2) of Executive Order 11491 had been violated. However, no further evidence was submitted to support the allegation.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

November 2, 1976

Mr. Charles O. Herr, Jr.
President, Local 1633
National Federation of Federal Employees
416 Lee Drive
Blue Springs, Missouri 64015

In reply refer to:
60-4629(CA)

Dear Mr. Herr:

The above-captioned case alleging violations of Sections 19(a)(1) and (2) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

The basic allegation in the complaint centers upon the denial of a request for a promotion made by employee Victor King. It is alleged, among other things, that the denial contained misrepresentations of facts and possible lies relating to King's job performance, because of his union activities.

The investigation disclosed that on January 12, 1976, King filed a letter of intent to conduct a petition drive for exclusive representative with the Activity. Thereafter, on January 19, 1976, King filed a written request for a promotion with his Division Chief, David Bell, which was subsequently denied in writing on January 23, 1976. The Complainant relies heavily upon the timing to support its allegation that the denial and/or content of the request for promotion was based upon the anti-union animus of the Activity. The evidence does not support such a finding. Thus, the investigation disclosed that King, on three or four occasions prior to his written request of January 19, 1976, had verbally sought information on a possible promotion, and that such requests had been ignored. Only when he requested a promotion in writing, (after his union activity was announced), did he receive a written denial. It is clear then, that King had made requests for promotion prior to any union activity on his part. It is clear also that the timing involved herein was dictated solely by King, not the Activity. It was King who filed the subject intent letter on January 12, 1976 and then filed a written request for promotion on January 19, 1976. The Activity was required to respond in writing to King's written request at a time subsequent to when King had announced his union sympathies.

The essential element in establishing violations of Sections 19(a)(1) and (2) is that of proving that an action by an Activity is motivated by some illegal anti-union bias. From the above, it is clear that the evidence does not support such a finding and I conclude that the Complainant has not sustained the burden of proof as required by Section 203.6(e) of the Assistant Secretary's Rules and Regulations.

Accordingly, in view of all of the above, I am dismissing the complaint in its entirety.

Pursuant to Section 203.8 of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, no later than close of business November 17, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator
for Labor-Management Services

JUN 2 1977

Hubert F. Sternweis, President
Association of Civilian Technicians
Wisconsin Chapter
[illegible] Summit Avenue
Sun Prairie, Wisconsin 53590

889

Re: Wisconsin Department of Military Affairs
Wisconsin Army National Guard
Case No. 51-3542(CA)

Dear Mr. Sternweis:

I have carefully considered your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-named case.

In agreement with the Acting Regional Administrator, I find that the complaint in this case should be dismissed. Thus, in Department of Defense, National Guard Bureau, Texas Air National Guard, A/SLMR No. 336, it was held that where there is an available appeals procedure in which the unfair labor practice issue could have been raised, the Assistant Secretary is precluded from deciding the complaint under the provisions of Section 19(a) of the Order. Cf. Department of the Air Force, Offutt Air Force Base, A/SLMR No. 78, at footnote 11. It is clear that such an appeals procedure was available to the grievants in the instant case. In view of this finding, it is unnecessary, and I do not pass upon the findings of the Acting Regional Administrator, nor have I relied upon any "additional information" which the Acting Regional Administrator appears to have relied upon in his dismissal of the Section 19(a)(1) allegations in this case.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

WISCONSIN DEPARTMENT OF MILITARY AFFAIRS
WISCONSIN ARMY NATIONAL GUARD
THE COMBINED SUPPORT MAINTANCE SHOP
CAMP DOUGLAS, WISCONSIN

Respondent

and

Case No. 51-3502(CA)

WISCONSIN CHAPTER, ASSOCIATION OF
CIVILIAN TECHNICIANS, INC.

Complainant

The Complaint in this proceding was received in the office of the Chicago Area Administrator, March 15, 1976, and was forwarded to the Office of the Minneapolis Area Administrator and received there March 23, 1976. It alleged that Respondent violated Sections 19(a)(1) and (4) of Executive Order 11491, as amended. On September 20, 1976, after considering the information submitted at that time in this proceding I dismissed the Section 19(a)(4) portion of this Complaint, but indicated that I would send the Section 19(a)(1) portion of the Complaint to hearing. Based upon additional information received, I have reconsidered that decision with regard to the 19(a)(1) portion and will accordingly dismiss this Complaint in its entirety in that no reasonable basis for the Complaint has been furnished.

In my September 20 decision, I intended to send the Section 19(a)(1) portion of this Complaint to hearing in that Complainant alleged that Respondent had engaged in retaliatory activity against two unit members for their having processed two grievances to the second step of their negotiated grievance procedure. Complainant had alleged, and Respondent had not denied, that on December 1, 1975, grievances filed by unit members Chris Zindorf and Thomas Perkins were refiled at Step II of the negotiated grievance procedure, and that two hours later adverse action removal letters were furnished both grievants. Additional investigation reveals that while the two grievances were respectively returned to the employees on December 1, and the proposal to remove letters were also issued on December 1, neither employee forwarded his grievance to Step II until December 8, 1975, or seven days after the receipt of the proposal to remove letters. Accordingly, I find no basis for the allegation of retaliatory action by the Respondent in that the Respondent acted at least seven days before the employees processed their grievances to Step II of the negotiated procedure. Further, I find no merit in Complainant's general allegation that Respondent issued these adverse actions in retaliation for the unit members having filed grievances, in that the record reflects several incidents of behavior on the part of the employees

involved which could be interpreted as causing the issuance of the proposal to remove letters. In any event, the record reflects that after hearing, both employees were reinstated, receiving only verbal reprimands.

I have been advised administratively that no requests for review of my September 20 dismissal of the 19(a)(4) allegation have been filed. Pursuant to Section 203.8(c) and Section 202.6(d) of the Regulations of the Assistant Secretary, the Complainant may appeal this 19(a)(1) dismissal by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service shall be filed with the request for review, and the request for review shall contain a complete statement setting forth facts and reasons upon which the request is based. Such request for review must be received by the Assistant Secretary for Labor Management Relations, Attention: Office of Federal Labor Management Relations. LMSA. U.S. Department of Labor, 200 Constitution Avenue NW, Washington. D.C. 20216, not later than the close of business December 9, 1976.

Dated at Chicago, Illinois this 24 day of November, 1976.

Thomas J Sheehan
Acting Regional Administrator
U.S. Department of Labor, LMSA
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

JUN 3, 1977

890

John C. Keane, President
American Federation of
Government Employees
Local 3607, AFL-CIO
6922 Quail Street
Arvada, Colorado 80004

Re: Environmental Protection Agency
Denver, Colorado
Case No. 61-3001(RO)

Dear Mr. Keane:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Objections in the above-captioned case.

In regard to Objection No. 1, contrary to the Regional Administrator, I find that the June 25, 1976, memorandum from the Director of the National Enforcement Field Investigation Center issued to all employees regarding the establishment of a flexitime program at the Activity and attaching a Washington Post column, concerning flexitime, violated the clearly established policy, as reflected in the Preamble and Section 1(a) of the Executive Order, that agency or activity management must maintain a posture of neutrality in any representation election campaign. cf. Antilles Consolidated Schools, Roosevelt Roads, Ceiba, Puerto Rico, A/SLMR No. 349. The subject of the memorandum and its attachment spoke directly to a personnel policy of concern to eligible voters. In my view, by issuing the memorandum four days prior to the election and attaching a news column which reflected AFL-CIO opposition to flexitime, the Activity violated its duty of election neutrality and thereby improperly interfered with the results of the election.

In reaching this disposition, it was noted that it is not necessary that an activity actually intend by its conduct to influence the voters. Rather, in my judgment, where, as here, activity conduct prior to an election tends to reflect a non-neutral attitude, I find that the laboratory circumstances sought to be achieved in the election are compromised. Under these circumstances, I shall set aside the election held in this case.

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

November 2, 1976

Re: 61-3001(RO)
Environmental Protection Agency and
American Federation of Government
Employees, AFL-CIO, Local 3607

Mr. John C. Keane
American Federation of Government Employees, Local 3607
6922 Quail Street
Arvada, Colorado 80004 Certified # 499094

Mr. Thomas Gallagher, Director
Environmental Protection Agency
National Enforcement Investigations Center
Building 53, Box 25227
Denver Federal Center
Denver, Colorado 80225
Attention: Mr. W. Clifton Miller, Certified # 499093
Labor-Management Relations Coordinator

Dear Sirs:

I have on this date issued a Report and Findings on Objections filed subsequent to an election held in the above-captioned case. During the course of the investigation of the objections, conducted under the direction of the Denver Area Office, statements were taken from Mr. Richard Folmsbee, Mr. James Hatheway, Mr. Thomas G. Burns, Mr. Brian Lee Ragase, Mr. Barrett Benson, Mr. Thomas C. Newman and Mr. James Steinfeld.

Inasmuch as the statements have been relied upon, in part, in reaching the conclusions arrived at therein, I am hereby transmitting the aforementioned signed statements to the parties.

Sincerely,

JOHN C. JACKSON
Acting Regional Administrator
Labor-Management Services

cc: Mr. Kenneth Bull, National Representative, AFGE,
5001 So. Washington, Englewood, Colorado 80110

cc cont.

Mr. Charles Carter, AFGE National Vice President
730 17th Street, Equitable Bldg., Room 808, Denver, CO 80202

Mr. Bernard E. DeLury, Assistant Secretary for Labor-Management Relations
ATTN: OFLMR, U. S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20216

Mr. Henry C. Lee, Jr.
Area Administrator
U. S. Department of Labor
Labor-Management Services Administration
15415 Federal Office Building
1961 Stout Street
Denver, Colorado 80202

Attachments

JUN 3, 1977

891

Mr. Robert C. Lewis
President, Marshall Engineers
and Scientists Association
IFPTE, AFL-CIO, Local 27
P.O. Box 1216
Huntsville, Alabama 35807

Re: Marshall Space Flight Center
Marshall Space Flight Center, Ala.
Case No. 40-7580(GA)

Dear Mr. Lewis:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the application for decision on grievability or arbitrability in the above-named case.

The evidence discloses that the grievance involved herein was not processed through all the steps of the parties' negotiated grievance procedure. In fact, the application herein was filed after only one step of the negotiated five-step procedure had been completed. Consequently, in agreement with the Regional Administrator, I find that the application herein is not properly before the Assistant Secretary. See Report On A Ruling No. 61 (copy attached).

Under these circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the application for decision on grievability or arbitrability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. — ROOM 300

November 12, 1976 ATLANTA, GEORGIA 30309

Mr. Joseph L. Sims
Executive Vice President
Marshall Engineers & Scientists
Association (MESA) Local 27 IFPTE
2508 Gladstone Drive, N.E.
Huntsville, Alabama 35811

Re: Marshall Space Flight Center
Marshall Space Flight Center, Alabama
Case No. 40-7580(GA)

Dear Mr. Sims:

The above-captioned case, initiated by the filing of an Application for Decision on Grievability or Arbitrability under Section 6(a)(5) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted.

The Applicant and the Activity are parties to a labor agreement which was in effect during all times material herein. The unit of recognition includes all professional engineers and scientists (NASA Classification Code Series 200 and 700) employed by the Activity, with the normal exclusions. Article 11, Section 11.09 contains a five-step grievance procedure. Article 12 provides for an arbitration procedure.

The Application requests a decision as to whether the grievance filed June 28, 1976, by employee Robert E. Lavender, is subject to the grievance procedure contained in the negotiated agreement. The grievance concerns alleged irregularities in filling a promotion vacancy for which Mr. Lavender had applied. On July 15, 1976, the Activity rejected the grievance as not grievable, contending that the grievance concerned a vacancy which was outside the bargaining unit covered by the agreement. The Activity's rejection of the grievance did not expressly designate the rejection as a final rejection. Nor does the July 15, 1976, letter show that any attempt to process the grievance further to arbitration would be futile. Subsequently, there was no further communication on the matter between the parties until the Applicant filed the subject application.

The Applicant contends that the grievant was unfairly denied "special consideration" for promotion which he was due as a repromotion eligible. The Applicant believes that those sections of the agreement relating to the rights of repromotion eligibles are binding on the Activity when repromotion eligibles are considered for any promotion vacancy.

The Activity contends that the provisions of the agreement do not apply to promotion vacancies outside the bargaining unit. Since the position at issue in the grievance was supervisory, the Activity contends that the grievance is not on a matter subject to the negotiated grievance procedure.

Section 11.10 of the agreement provides that:

> If the UNION is not satisfied with the decision of the Center Director, the UNION may, within thirty (30) workdays thereafter, give formal written notice to the EMPLOYER that such unresolved grievance shall be referred to Arbitration in accordance with Article 12, Arbitration, otherwise the decision made by the Center Director shall be final.

The decision of the Assistant Secretary in Report No. 56 issued October 15, 1974, provides as follows:

> For the purposes of computing the sixty (60) day filing period of an Application for Decision on Grievability or Arbitrability under Section 205.2(a) of the Assistant Secretary's Regulations, there must be a final written rejection after the arbitration clause is invoked. 1/

Inasmuch as the grievance procedure provides for arbitration and as the Applicant has failed to invoke arbitration, the Activity did not provide the Applicant with its final rejection of the grievance on the grounds that the grievance is not subject to the grievance procedure. Therefore, no determination can be made as to whether the grievance is on a matter subject to the grievance procedure. 2/

1/ Section 205.2(a) is now Section 205.2(b).
2/ The Activity has filed a Motion To Join Grievance, (i.e., the subject application) with Case No. 40-7474(GA). On October 6, 1976, I issued Report and Findings on Grievability in that case. In light of my decision herein, the Motion To Join is hereby DENIED.

I am, therefore, dismissing the application in this matter.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D. C. 20216, not later than the close of business November 29, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services Administration

cc: Richard A. Reeves
Agency Counsel
Marshall Space Flight Center
Marshall Space Flight Center, Alabama 35812

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

June 3, 1977

892

Phillip J. Barkett, Jr., Attorney
Dempster, Yokley, Fuchs and Barkett
P.O. Box 308, 215 North Stoddard Street
Sikeston, Missouri 63801

Re: Social Security Administration
Cape Girardeau District
Cape Girardeau, Missouri
Case No. 62-5118(CA)

Dear Mr. Barkett:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case.

In agreement with the Regional Administrator, and based on his reasoning, I find that a reasonable basis for the complaint has not been established.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U[illegible] DEPARTMENT OF L[illegible]OR
[illegible]BOR-MA[illegible]GEMENT SERVICES AD[illegible]NISTRATI[illegible]
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

October 29, 1976

Phillip J. Barkett, Jr., Attorney
Dempster, Yokley, Fuchs and Barkett
P.O. Box 308, 215 North Stoddard Street
Sikeston, Missouri 63801

In reply refer to: 62-5118(CA)

Dear Mr. Barkett:

The above-captioned case alleging violations of Section 19(a)(1) and (2) of Executive Order 11491, as amended, concerning Geraldine M. Storey and the Social Security Administration, HEW, has been investigated and considered carefully. The complaint alleged that Mrs. Storey did not receive a permanent position and that she was discharged due to her membership in Local 3521, American Federation of Government Employees and because of age.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established. Section 203.6(e) of the Regulations of the Assistant Secretary places the burden of proof at all stages of the proceeding upon the Complainant. In order to sustain a violation of Sections 19(a)(1) and (2) of the Order there must be a showing that the Respondent's actions were motivated by antiunion animus, there must be evidence of discrimination against the Complainant, and a cause and effect relationship must be established between the antiunion motivation and the discrimination. You have failed to establish that any of these three conditions have been met.

Investigation conducted by the St. Louis Area Office failed to reveal any evidence that management was aware of Mrs. Storey's union membership at the time she was considered but not selected for the permanent position. Further investigation disclosed that her employment was terminated on the date stipulated in the document formalizing her temporary appointment. Therefore, no basis for her allegation that either of these actions were taken by the Social Security Administration District Office management because of her union affiliation was developed.

This office has no authority to make any finding with regard to your allegation that Mrs. Storey's complaint arose based on age discrimination. Even if age discrimination had been proven in this case, it could not be the basis for a violation of Section 19(a)(1) and (2) of the Order

inasmuch as only rights protected by the Order can give rise to such a violation. Freedom from discrimination because of age is not a right assured by the Order.

It has been found previously that allegations unsupported by evidence shall not constitute a reasonable basis for complaint as required by the Assistant Secretary's Regulations. Consequently, the complaint in this case is hereby dismissed in its entirety. 1/

Pursuant to Section 203.8(c) of the Regulation of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N.W., Washington D.C. 20216, not later than the close of business November 15, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator for
Labor Management Services

1/ In view of the decision herein I find it unnecessary to rule on the Respondent's Motion to Dismiss.

Mr. Marion P. Pulzone
President, Local 967
American Federation of Government
Employees, AFL-CIO
1611 Fenwood Avenue
Oxon Hill, Maryland 20021

893

Re: Department of the Air Force
Bolling Air Force Base, Maryland
Case No. 22-6770(AP)

Dear Mr. Pulzone:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability or Arbitrability in the above-named case.

In your application, you stated that you received the final written rejection of the grievance involved herein on August 7, 1975. You unilaterally proceeded on September 4, 1975, to request a list of arbitrators from the Federal Mediation and Conciliation Service. In a letter dated September 19, 1975, the Activity, after noting its August 7, 1975, letter, agreed to submit the matter to the Assistant Secretary for a decision on the applicability of the negotiated grievance procedure, and the timeliness questions involved, if your organization insisted on further pursuing the matter. Subsequently, on November 5, 1975, the parties discussed whether to send the matter to the Assistant Secretary and on December 15, 1975, the Activity agreed to submit the matter jointly to the Assistant Secretary. Your application, however, was not filed until March 29, 1976. Even utilizing the December 15, 1975, date, when the parties agreed to submit the matter to the Assistant Secretary, rather than the August 7, 1975, date, I find that such application was untimely filed. Thus, in my view, parties may not agree to waive the precribed time limits set forth in the Assistant Secretary's Regulations. (See particularly Section 205.2(b) of the Assistant Secretary's Regulations which requires, in relevant part, that an application be filed within 60 days of a rejection of the request for arbitration.) Moreover, in agreement with the Acting Regional Administrator, I find that the June 10, 1975, grievance was untimely filed under the prescribed time limits set forth in the parties' negotiated agreement.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's Report and Findings on Grievability or Arbitrability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

1100TH AIR BASE WING
BOLLING AIR FORCE BASE
DEPARTMENT OF THE AIR FORCE

Activity

and

Case No. 22-6770(AP)

LOCAL 987, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Labor-Organization/Applicant

REPORT AND FINDINGS
ON
GRIEVABILITY OR ARBITRABILITY

Upon an Application for Grievability or Arbitrability having been filed in accordance with Section 205 of the Rules and Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows: the Union and the Activity are parties to a collective bargaining agreement effective for two years from July 22, 1974.

On June 24, 1975, Irene Holloway filed a grievance asserting that she should have been placed on a merit promotion register, that the Activity did not take into account a computer program course she had completed nor was her "self-development" considered. On March 29, 1976, the Union filed its application covering the grievance.

In January of 1975, the Activity established two computer programmer trainee positions under its Merit Promotion Plan (MPP) which was established in April 1974. The MPP set forth the procedures and qualifications which were to be used to evaluate and refer candidates for promotional consideration. The Activity used a skills locater system to screen employees who had previously listed themselves as being interested in the computer field. The grievant's qualifications, according to the criteria used, were insufficient to put her on the merit promotion certificates which were issued February 3rd and March 24th, 1975, since they failed to meet the minimum qualifications outlined in Civil Service Series CSC X-118, GS 334. On April 23, 1975, in a meeting which included Ms. Holloway, her failure to appear on the certificate was discussed. This fact is undisputed.

Pertinent provisions of the collective bargaining agreement are:

Article 4 -
Legal and Regulatory Requirements and Rights of Employer

Section b. To the extent that provisions of the 1100 ABW regulations, policies, and standard operating procedures are in conflict with this Agreement, the provisions of the Agreement shall govern.

Article 14 Merit Staffing and Promotions

Section a. It is agreed that the Employer shall utilize, to the maximum extent possible, the skills and talents of its employees. To this end, the Union fully supports the goals and purpose of the Employer's Merit Promotion Program. In the selection of a best qualified candidate, or a basically eligible candidate when such are submitted to the selecting authority to fill a vacancy under the Merit Promotion Program, the selecting authority is encouraged to give Unit employees every consideration in the selection decision.

Section b. The Employer agrees to establish a Joint-Merit Promotion Review Panel to review the implementation of the Merit Promotion Program for the purpose of recommending to the Employer constructive improvements in the efficiency and equity of the program operations. The Panel will include two Union representatives and two Employer representatives and will meet quarterly except that the parties may meet more frequently when situations develop that cannot be deferred until the next scheduled quarterly meeting. The Employer will provide the Union with minutes of the Panel meetings.

Article 24 (in part)

GRIEVANCE PROCEDURE

Section a. This Article provides for the orderly processing of employee, employer and union grievances as specifically set forth in Section 13 of the Executive Order. Grievances to be processed under this Article shall pertain only to the interpretation or application of express provisions of this Agreement. Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter subject to this grievance procedure or subject to arbitration under the Agreement shall be referred to the Assistant Secretary of Labor-Management Relations for decision.

Section c. An employee, a group of employees, the union, or the employer must initiate the grievance within fifteen (15) calendar days after the incident occurs or the date the party becomes aware of a decision about which it is aggrieved.

Section d. The following procedures shall apply in processing grievances under this Article initiated by employees electing to be represented by an individual approved by the Union:

Step 1. The grievant and his representative shall first present the matter to the immediate supervisor who shall meet with the grievant within seven (7) calendar days after receipt of the grievance to discuss the matter. The supervisor shall, within seven (7) calendar days after the discussion, notify the grievant as to the disposition of the grievance.

Step 2. If the grievant is dissatisfied with the solution arrived at through the initial discussions with the supervisor, the grievant shall present the grievance in writing to his second level supervisor within ten (10) calendar days. The written grievance must be on an official grievance form (Attachment 1). The second level supervisor will meet with the grievant, his representative, and other employees directly involved within seven (7) calendar days from the date the grievance is received. The second level supervisor will then give his written decision on the grievance to the grievant within seven (7) calendar days after close of the grievance discussion.

Article 25 (in part)

ARBITRATION

Section 1. If the employer and the union fail to settle any grievance processed under the negotiated grievance procedure, such grievance, upon written request by either party, may be submitted to arbitration.

The union argues that,

1. The grievance is subject to the negotiated grievance procedure because it involves the interpretation of Article 14, Section 2, as it applies to the Merit Promotion Plan.

2. The grievance was filed timely; moreover, the Activity did not stop the processing of the grievance and is estopped from arguing timeliness.

3. Article 4, Section b also applies since it states that to the extent that provisions of 1100ABW regulations are in conflict with the contract, the contract shall govern.

The Activity argues that the issue is not covered by the negotiated grievance procedure: that the question raised by the grievance, that of proper application of the MPP (Ms. Holloway's non-placement on the register), can

only be resolved through the complaint procedure outlined in the MPP.1/ It asserts that Article 14, Section a, requires that management use the procedures in the MPP, that it was not the intent of the parties to incorporate the MPP into the contract as evidenced by the fact that the parties agreed during negotiations to defer all promotion related matters to the MPP in exchange for the establishment of the Joint Review Panel. Finally, the Activity argues that the grievant had a "meaningful and agreed upon procedure to resolve the dispute. It was the MPP." The Activity also asserts that apart from all other considerations, the grievant did not file her grievance timely. The certificates were filed on February 3rd and March 24th, 1975 and she became aware of her non-placement on April 23, 1975. The grievance was not filed until June 24, 1975, more than fifteen days thereafter.

I shall decide this case on the issue raised in the grievance: the non-placement on the certificates. The union urged but I shall not consider the question of pre-selection or activity misconduct in the selection or the application of the entire MPP since these points were not part of the grievance.

Article 14, Section a states, that the union supports the plan and that Unit employees will be given every consideration. It does not discuss nor deal with any of its provisions, procedures or guidelines. There is no discussion of the provisions of the plan; it merely recognized the existence of the plan. There is nothing in the contract to indicate that the grievance machinery applies to the administration of the plan. The contract was drafted and executed after the issuance of the plan, had the parties intended to incorporate the provisions of the plan in the agreement or make its grievance procedure applicable to its administration, they could have done so. No evidence was introduced that it was the intent of the parties to have the plan covered by

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1/ "Employee Complaints

The Civilian Personnel Officer and selecting officials will make every effort to resolve employees' questions or complaints on matters concerning promotion, on an informal basis. Formal complaints will be processed in accordance with AFR40-771 or, if appropriate, under the provisions governing Equal Employment Opportunity, AFR 40-713. Failure to be selected for promotion when proper procedures were used, is not a basis for formal complaint."

he agreement. 2/ I find irrelevant the position of the Union that Article o is applicable since there is no evidence that there is any conflict between he plan and the contract. I find nothing in the plan or in the contract to dicate that the grievances arising from the administration of the plan are o be subject to the grievance procedures in the contract. Nor do I find any tent by the parties when either the plan was drafted or the contract discussed o have such occur.

Were I to find that the grievance with respect to the MPP is covered by the rievance procedure set forth in the contract, I would nevertheless also find the atter non-arbitrable on the basis that the grievance was not timely filed. Ms. olloway became aware that she was not on the register on April 23, 1975; her rievance was filed more than fifteen days after this date.

I find that the grievance is not on a matter relating to the interpretation nd application of the contract and is, therefore, not subject to its grievance nd arbitration procedures. Moreover, even if the subject should be held to be rievable or arbitrable, the grievance was not timely filed and the matter there is neither grievable nor arbitrable.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, U.S.Department of Labor, 200 Constitution Avenue, N.W., Washington,D.C. 20216. A copy of the request for review must be served on the undersigned Acting Regional Administrator as well as the other parties. A statement of such service should accompany the request for review. The request must contain a complete statement setting forth facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business September 10, 1976.

Dated: April 26, 1976

Eugene M. Levine,Acting Regional
Administrator for Labor-Managment Services
Philadelphia Region

2/ In this respect, the Activity alleged to the contrary that there was discussion in which the parties agreed to defer such disputes and appoint a committee to discuss the plan. I make no finding in this respect. My finding is that no evidence was offered to show an intent by the parties to invoke the contract for MPP disputes.

Mr. A. Sarlo, Jr.
Chief, Personnel Division
Veterans Administration
Hines Marketing Center
Post Office Box 27
Hines, Illinois 60141

Re: Veterans Administration
Hines Marketing Center
Hines, Illinois
Case No. 50-13172(RO)

Dear Mr. Sarlo:

I have considered carefully your request for review seeking reversal of a portion of the Regional Administrator's Report and Findings on Challenged Ballots in the above-captioned case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the evidence establishes that Ms. Weather is not a supervisor within the meaning of Section 2(c) of Executive Order 11491, as amended, and that, therefore, her ballot should be opened and counted.

With regard to your request concerning the Regional Administrator's ruling with respect to absentee mail ballots, I find such request is inappropriately raised in a request for review. Thus, the Regional Administrator's ruling in this regard was made known to management's representative at pre-election meetings and was not made the subject of a timely objection to the conduct of the election in this matter. It is further noted that any employee who wished could have cast a challenged ballot during the course of the election. Having failed to do so, no ballot may be provided thereafter.

Accordingly, your request for review, seeking reversal of certain portions of the Regional Administrator's Report and Findings on Challenged Ballots, is denied, and the Regional Administrator is hereby directed to cause the challenged ballot of Ms. Weathers to be opened and counted and a revised Tally of Ballots to be issued thereafter.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

VETERANS ADMINISTRATION,
HINES MARKETING CENTER,
HINES, ILLINOIS,

Agency and Activity

and

Case No. 50-13172(RO)

LOCAL 73, GENERAL SERVICE EMPLOYEES
UNION (GSEU), SEIU, AFL-CIO,

Petitioner

REPORT AND FINDINGS
ON
CHALLENGED BALLOTS

In accordance with the provisions of an Agreement for Consent or Directed Election approved on October 19, 1976, an election by secret ballot was conducted under the supervision of the Area Administrator, Chicago, Illinois, on November 2, 1976. The results of the election as set forth in the Tally of Ballots are as follows:

Approximate number of eligible voters	53
Void ballots	0
Votes cast for Local 73, GSEU	24
Votes cast against exclusive recognition	24
Valid votes counted	48
Challenged ballots	2
Valid votes counted plus challenged ballots	50

Challenged ballots are sufficient in number to affect the results of the election.

In accordance with Section 202.20 of the Regulations of the Assistant Secretary, the Area Administrator investigated the challenged ballots. Set forth below are the positions of the parties, the essential facts as revealed by the investigation, and my findings and conclusion with respect to each of the challenged ballots involved herein:

The unit in the Agreement for Consent or Directed Election reads as follows:

INCLUDED: All General Schedule (GS) regular work force employees employed by and assigned to VA Marketing Center, Hines, Illinois.

EXCLUDED: Professional employees, management officials, employees engaged in Federal personnel work in other than a purely clerical capacity and supervisors as defined in Executive Order 11491, as amended.

The ballots cast by Kenneth Donovan and Arthur Jean Weathers were challenged.

Kenneth Donovan:

The ballot of Kenneth Donovan was challenged by the activity on the grounds that, as an Electronics Engineer, he is a professional employee and is excluded from the unit by the terms of the Agreement.

The Petitioner takes the position that Donovan is not a professional employee, but it has provided no information or documentation in support of its position concerning this employee in spite of a written request to do so by the Area Administrator.

The Area Administrator's investigation reveals that, in the performance of his duties, Donovan requires the advanced knowledge of electrical engineering which he acquired during the completion of a professional engineering curriculum leading to a bachelor of science degree. It is clear that the work performed by Donovan, including contacting other engineers to exchange technical information, keeping abreast of developments in medical technology, and monitoring and evaluating X-ray and nuclear scanning equipment, is predominantly intellectual in character and requires the consistent exercise of discretion and judgment in its performance.

Based upon the foregoing I find that Kenneth Donovan is a professional employee within the meaning of the Order and by the terms of the Agreement for Consent or Directed Election is excluded from the unit appropriate to this election. Accordingly, the challenged ballot of Kenneth Donovan will not be opened and counted.

Arthur Jean Weathers:

The ballot of Arthur Jean Weathers was challenged by the activity on the grounds that she is a supervisor within the meaning of the Order.

The activity's position is that, as a Lead Procurement Clerk (Typing), Weathers supervises the work of three Procurement Clerks-Typing and that her supervisory duties include assigning work, amending or rejecting work submitted to her, submitting performance evaluations, approving leave of less than one day, and resolving employee complaints which are minor in nature.

The Petitioner's position is that Weathers serves as a leader for the employees rather than supervises them. The Petitioner submits that Weathers is not responsible for executing final judgment concerning the performance evaluations of the three Procurement Clerks-Typing, nor does she have the authority to sign their leave slips. The Petitioner further submits that Weathers' primary duties are those of a Procurement Clerk-Typing.

The investigation discloses that Weathers is a Lead Procurement Clerk, GS-1106-5, in the Procurement Section at the VA Hines Marketing Center. Approximately 50 percent of her work done is spent doing typing. The remaining 50 percent of her work done is devoted to proofreading her own work and assigning and proofreading the work of three Procurement Clerks, GS-1106-4, employees who also work in the Procurement Section of the VA Hines Marketing Center. The description and assignment of work by Weathers is based on priorities determined by the contracting officer.

The investigation shows that Weathers does not have the authority to hire, transfer, suspend, layoff, or recall any of the three GS-4 Procurement Clerks with whom she works or to effectively recommend same. The authority to take any of the aforementioned actions apparently rests with the Supervisory Procurement Agent, GS-1102-12, Jessie B. Holder. It is noted that Holder has signed, above the title of immediate supervisor, each of the position descriptions of the three GS-4 Procurement Clerks working with Weathers and has also signed Weather's position description in the same manner.

With respect to grievance processing, Weathers has the authority to make minor adjustments in the working conditions of the three GS-4 Procurement Clerks usually involving matters of typing. Should the grievance be subject to the agency grievance procedure the Supervisory Procurement Agent, Holder, would be the initial management representative of the Activity to respond to the employee rather than Weathers. Annual or emergency leave for less than a day is within the authority of Weathers to grant to the three GS-4 Procurement Clerks but leave for more than one day must be approved by the Supervisory Procurement Agent. Where a leave slip is required, only the Supervisory Procurement Agent has authority for signature approval. It is urged by the Activity that Weathers has the authority to recommend cash awards and within-grade increases for the three Procurement Clerks but she has not made any such recommendations since the assumption of her position in August of 1975. Further, the investigation reveals that Weathers has the authority to make recommendations concerning performance evaluations on an annual basis for each of the Procurement Clerks, and the Supervisory Procurement Agent has the authority to make the final decision. Weathers does not sign the evaluation form, but she states in the one instance that she evaluated a Clerk Typist - the evaluation was accepted. However, submitting performance evaluations is no longer among the indicia defining supervisory authority pursuant to Executive Order 11491, as amended.

Based on the foregoing facts disclosed by the investigation, I find that such authority as Weathers does possess to assign, direct or to discipline employees appears to be of a secretarial or clerical

nature which does not require the use of independent judgment. Her relationship with the three GS-4 Procurement Clerks seems to be that of a more experienced employee to a less experienced employee. Accordingly, I find that Weathers is not a supervisor within the meaning of the Order and should be included in the bargaining unit. The challenged ballot of Weathers will be opened and counted at such date, time and place as the Area Administrator shall specify, absent the timely filing of a request for review.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by Management Relations, U. S. Department of Labor, LMSA, Attention: Office of Federal Labor-Management Relations, 200 Constitution Avenue, N. W., Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the other parties. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business December 28, 1976.

Dated at Chicago, Illinois this 13th day of December 1976.

R. C. DeMarco, Regional Administrator
United States Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

6-6-77

895

Mr. Frank D. Ferris
National Field Representative
National Treasury Employees Union
4510 (T) Oakland Grand Road
Columbia, Missouri 65201

Re: Department of Treasury
Internal Revenue Service
St. Louis District, Missouri
Case No. 62-4870(CA)

Dear Mr. Ferris:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the Section 19(a)(1) portion of the instant complaint, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in the matter involved are not warranted. Thus, I find that Section 19(d) of the Order precludes the consideration of the Section 19(a)(1) allegations of your complaint as the evidence establishes that such allegations have been raised previously under a negotiated grievance procedure.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of that portion of the complaint alleging a violation of Section 19(a)(1), is denied, and the case is hereby returned to the Regional Administrator for appropriate action on the remaining portions of the complaint.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

November 8, 1976 Re: 62-4870(CA)

Mr. David J. Murphy, Attorney Certified Mail No. 499138
Office of Regional Counsel
Internal Revenue Service
22nd Floor, South
219 South Dearborn Street
Chicago, Illinois 60604

Mr. Frank D. Ferris Certified Mail No. 499139
National Field Representative
National Treasury Employees Union
4510 (I) Oakland Gravel Road
Columbia, Missouri 65201

Dear Messrs. Murphy and Ferris:

The above-captioned case alleging violations of Executive Order 11491, as amended, has been investigated and considered carefully.

The Complaint Against Agency (LMSA-61) filed May 24, 1976 alleged violations of Sections 19(a)(1) and (6) of the Executive Order by the St. Louis District Internal Revenue Service. The Section 19(a)(1) violation charged was based upon an allegation that Mr. Edwin L. Brooke, Chief, Examination Branch 2 of the District's Audit Division, threatened and coerced an employee in the exercise of her rights under the Order, specifically, when on January 9, 1976 he advised Marie C. Gerules, an employee of Examination Branch 2 who had on December 23, 1975 filed a grievance concerning her proposed transfer from Kansas City, Missouri to Chillicothe, Missouri, that unless she dropped her grievance he would not authorize travel money for her attendance at a Unit II Tax Auditor School to be held in Omaha, Nebraska. This direct communication of Mr. Brooke with Ms. Gerules is also the basis for the alleged violation of Section 19(a)(6).

It does not appear that further proceedings are warranted in regard to the Section 19(a)(1) violation alleged, for reasons set forth hereinafter.

Investigation by the St. Louis Area Office disclosed that on January 12, 1976, Ms. Gerules filed a grievance alleging a collective and apparent conspiracy to harass her by threats to cancel her travel allowance to attend the in-service school at Omaha, and by attempting to force her to submit a written statement involuntarily and under duress to the effect that she would or would not submit to the involuntary transfer, which

had been the subject of the earlier grievance. Furthermore, on January 13, 1976 Donald Klaassen, Ms. Gerules' union representative, grieved reprisal and retaliation against Gerules for filing a grievance concerning the cancellation of her scheduled in-service training for Auditors, and the heavy pressure to which she was subjected to force her "to accept an involuntary transfer or demotion, or both." Accordingly, both grievances, filed some two weeks in advance of the pre-complaint charge letter, which was dated January 27, 1976, contain the essential ingredients of the Section 19(a)(1) unfair labor practice complaint.

Thus this issue was raised under a grievance procedure prior to its being filed as an unfair labor practice charge and Section 19(d) of the Order prevents my giving it further consideration.

I am, therefore, dismissing this portion of the complaint. The charge of violation of Section 19(a)(6), mentioned above, will be processed separately.

Pursuant to Section 203.8(c) of the Rules and Regulations of the Assistant Secretary, you may appeal the dismissal portion of this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216 not later than the close of business November 23, 1976.

Sincerely,

CULLEN P. KEOUGH
Regional Administrator for
Labor-Management Services

cc: Bernard E. DeLury
Assistant Secretary for Labor-Management Relations
Attn: Office of Federal Labor-Management Relations
U. S. Department of Labor
200 Constitution Avenue, N. W.
Washington, D. C. 20216

Herbert P. Krehbiel, Area Administrator
Labor-Management Services Administration
U. S. Department of Labor
210 North 12th Boulevard
St. Louis, Missouri

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

June 6, 1977

896

John W. Mulholland, Director
Contract Negotiation Department
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Ave., N.W.
Washington, D.C. 20005

Re: Immigration and Naturalization Service
U.S. Border Patrol
Case No. 22-06842(CA)

Dear Mr. Mulholland:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violations of Section 19(a)(1) and (6) of Execuitve Order 11491, as amended.

In agreement with the Regional Administrator, I find that further proceedings in this matter are unwarranted. Thus, in my view, the evidence does not establish that the Activity condoned the use of "speed loaders" or that its January 23, 1976, memorandum was inconsistent with the Activity's past policy on the subject. In this regard, see Section 203.6(e) of the Assistant Secretary's Regulations which provides that, "The complainant shall bear the burden of proof at all stages of the proceeding regarding matters alleged in its complaint . . ."

Accordingly, and as, in my view, the investigation conducted by the Area Office in this matter was proper and sufficient, your request for review seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
REGIONAL OFFICE
3535 MARKET STREET -- ROOM 14120
PHILADELPHIA, PENNSYLVANIA 19104

215-596-1134

November 16, 1976

Mr. James P. Jones
Contract Specialist
American Federation of
Government Employees
1325 Massachusetts Ave., N.W.
Washington, D.C. 20005
(Certified Mail No. 659412)

Re: Immigration and Naturalization
Service, AFGE
Case No. 22-6842(CA)

Dear Mr. Jones:

The above-captioned case alleging a violation of Executive Order 11491, as amended, has been investigated and considered carefully. It doew not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

In your complaint you allege that the use of "speed loaders" by agents was an accepted practice throughout the Border Patrol. On January 23, 1976, the Activity issued a memorandum prohibiting the use of "speed loaders". You allege that this memorandum constituted a unilateral change in the terms and conditions of employment and that the Activity violated Sections 19(a)(1) and (6) of the Order when it failed to negotiate with the Exclusive Representative before making this change.

An independent investigation was conducted by the Labor-Management Services Administration. Border Patrol agents in various sectors throughout the country were interviewed and signed statements concerning the use of "speed loaders" were obtained. The evidence that was gathered in the investigation does not support your allegations that the use of "speed loaders" was an accepted work practice in various Border Patrol sectors or that the Activity approved of the usage. To the contrary, the investigation revealed that Respondent's long standing policy has been a prohibition against the use of speed loaders by Border Patrol Agents, which has been observed.

I am, therefore, dismissing your complaint in its entirety.

Pursuant to Section 203.8(c), you may appeal this section by filing a request for review with the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the Activity and any other party.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business December 1, 1976.

Sincerely,

Kenneth L. Evans
Regional Administrator
for Labor-Management Services
Philadelphia Region

cc: Mr. Dennis Ekberg
Labor Management Relations Specialist
425 I Street, N.W., Room 7027-B
Immigration and Naturalization Service
Washington, D.C. 20536
(Certified Mail No. 659413)

bcc: OFLMR
John Gribbon, CSC
WAO

6-6-77

897

Mr. James E. Lyons
Director of Public Employee
Affairs and Legislation
International Federation of Professional
and Technical Engineers
1126 16th Street, N. W., Suite 200
Washington, D. C. 20036

Re: Marshall Space Flight Center
Huntsville, Alabama
Case No. 40-7474(GA)

Dear Mr. Lyons:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Grievability in the above-named case.

The record reflects that arbitration was not invoked prior to the filing of the instant application as is normally required under the Assistant Secretary's procedures. See Report On A Ruling No. 61. However, in the instant case, it was noted particularly that the management representative who rejected the grievance at the final step of the grievance procedure is the same individual who would answer a request for arbitration, and that he advised the Applicant at that point that its rights were with the Assistant Secretary. Under these special circumstances, I find that to require the invocation of arbitration would have been to require a futile act.

In regard to whether the subject grievance is grievable or arbitrable under the parties' negotiated agreement, in my view relevant questions of fact and the intent of the parties exist which can be best resolved by taking of record testimony.

Accordingly, your request for review, seeking reversal of the Regional Administrator's determination in the instant case, is granted and the case is hereby remanded to the Regional Administrator, who is directed, absent settlement, to issue a notice of hearing.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

MARSHALL SPACE FLIGHT CENTER MARSHALL SPACE FLIGHT CENTER, ALABAMA Activity and MARSHALL ENGINEERS AND SCIENTISTS ASSOCIATION LOCAL 27, IFPTE Applicant	Case No. 40-7474(GA)

REPORT AND FINDINGS
ON
GRIEVABILITY

Upon an Application for Decision on Grievability or Arbitrability duly filed under Section 205 of the Regulations of the Assistant Secretary, an investigation of the matter has been conducted by the Regional Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, I find and conclude as follows:

An Application was filed on July 22, 1976, by the Marshall Engineers and Scientists Association, Local 27, International Federation of Professional and Technical Engineers, AFL-CIO, hereinafter referred to as the Applicant.

The Applicant is the exclusive representative of approximately 1,700 professional employees of the George C. Marshall Space Flight Center, hereinafter referred to as the Activity.

The Applicant and the Activity are parties to a bargaining agreement effective February 5, 1974, for a duration of two years, with an annual renewal clause thereafter. Article 11 of the agreement contains a grievance procedure. Section 11.05 of that Article provides a procedure for the resolution of grievances initiated by the union or the employer. The employer or union may initiate a grievance by informing the other in writing of the incident giving rise to the grievance and the corrective action sought. A meeting is held within ten days, and if there is no resolution within fifteen days, the parties may use the arbitration procedures which are set out in Article 12.

On May 28, 1976, the Applicant filed a union-initiated grievance alleging that the Activity violated Article 3 entitled PROVISIONS OF LAW AND REGULATIONS; Article 6, RIGHTS AND RESPONSIBILITIES OF EMPLOYEES; Article 23 dealing with PROMOTIONS AND ASSIGNMENTS; Article 25 entitled DETAILS; and Article 28 entitled REDUCTION IN FORCE. The grievance concerns the manner in which the Activity filled two vacancies, Deputy Director of the Systems Dynamics Laboratory, Announcement No. 76-35, and Chief Manager in the Engineering Management Office in the Shuttle Projects Office, Announcement No. 76-36. The positions are supervisory and were filled on May 12 and May 20, 1976, respectively, by James M. Sisson and Harold Ledford. Prior to promotion to these positions Sisson and Ledford were management officials.

The grievance charged that the Activity violated the agreement by its actions in connection with filling the positions in Announcements 76-35 and 76-36, including preselection, failure to give special consideration to repromotion eligibles, improper promotion panel membership, improper ranking procedure, and failure to send repromotion eligibles notice of promotion announcement. The grievance seeks (1) cancellation of Sisson's and Ledford's promotions, (2) special consideration for repromotion eligibles, 1/ (3) promotion of the best qualified repromotion eligible and (4) compliance with Section 28.07 which requires notification to repromotion eligibles.

1/ A repromotion eligible is an employee who has been downgraded during a reduction in force or reclassification action.

On June 8, 1976, the Activity rejected the grievance on the basis that both positions in Announcements 76-35 and 76-36 are management positions and are therefore outside the bargaining unit. 2/

Applicant states it filed a prior grievance on a promotion action involving a supervisory position which was accepted by the Activity and went to arbitration. It states that on February 20, 1976, a grievance was filed that was similar in all respects to the instant grievance. According to the Applicant, the Activity did not raise a grievability issue in that grievance. It is Applicant's contention that the Activity's position in the instant grievance is inconsistent with that taken in the February, 1976, grievance.

The Activity states that its acceptance and processing of the February, 1976, grievance was an administrative oversight. According to the Activity it was not learned that the earlier grievance concerned a supervisory position until it had been accepted and processing was well underway. The Activity argues that acceptance of one grievance does not establish a precedent for processing of other grievances.

Section 23.01 states the purpose of Article 23, PROMOTION AND ASSIGNMENTS:

> The purpose of this plan is to assure selection from among the best qualified persons available to fill vacancies on the basis of merit, fitness, and qualifications and without regard to race, color, religion, national origin, marital status, sex, age, physical handicap, union affiliation, personal favoritism or political affiliations. The merit promotion plan does not guarantee promotion but rather is intended to assure that all qualified employees receive fair and equitable consideration for promotional opportunities.

The unit represented by Applicant and which is set out in Article 2 of the agreement consists of:

> All professional engineers and scientists (NASA Classification Code Series 200 and 700) employed by Marshall Space Flight Center and excluding all management officials, non-professional employees, all other professional employees, employees engaged in Federal personnel work in other than a purely clerical capacity and supervisors and guards as defined in Executive Order 11491, as amended.

Section 23.11 acknowledges the exclusion of supervisory positions from the bargaining unit. It states:

> It is recognized by the parties that supervisory positions are outside the bargaining unit; however, if bargaining unit employees apply for a supervisory position, Section 23.10 above will be followed.

Section 23.10 reads:

> During the period from announcement of a position to final selection, the UNION President will be provided upon request with:
>
> a. The position and its location
>
> b. The name of the selecting official
>
> c. The number and names of qualified applicants
>
> d. The weighted evaluation criteria
>
> e. The number of highly qualified applicants

2/ Applicant did not request arbitration prior to filing the Application. However, I have treated the Activity's June 8 letter as a final rejection within the meaning of Section 205.2(b) of the regulations in light of the Activity's advising Applicant that if it disagreed with its rejection of the grievance, Applicant had available to it the procedures in 13(d) of the Order.

> After final selection, the UNION President will be provided, upon request, with the names of the highly qualified top 10, the name of the selectee, and the names of the panel members.

The agreement thus provides that the Activity upon request will provide the exclusive representative with certain information concerning the filling of vacancies outside the unit. I do not read the entire Section 23 to apply to the filling of vacancies in supervisory positions or to any other positions outside the bargaining unit.

With respect to Articles 25 and 28, Applicant contends the Activity violated Sections 25.01 and 25.08 of Article 25 by detailing Ledford to a position in the Shuttle Projects Office prior to the announcement of the vacancy therein. The Applicant feels that such a detail gave Ledford an unfair advantage over other applicants when a management position in that office became available.

Section 25.01 states the purpose of Article 25:

> A detail is the temporary assignment of an employee to a different position for a specified period, with the employee returning to his regular duties at the end of the detail. The EMPLOYER may detail employees where such action will relieve a temporary shortage of personnel, will reduce an exceptional volume of work, or will enable more effective administration by permitting necessary flexibility in assigning the work force. All details will be made in conformity with appropriate law and regulations set forth in the Federal Personnel Manual.

Section 25.08 states:

> The EMPLOYER will control the duration of details and assure that the details do not compromise the open-competitive principle of the merit system or the principles of job evaluation.

Within the context of Article 25 "detail" means a detail of a bargaining unit employee or a detail to a position within the unit. The detail at issue in the grievance was a detail of a management official from one management position to another. It was not, therefore, subject to the provisions of Article 25. Consequently, the matter grieved is not subject to Article 25 of the agreement.

Sections 28.06 and 28.07 of Article 28, REDUCTION IN FORCE, state that:

> Section 28.06. Demotions resulting from positions being downgraded other than by correction of a classification error or from a change in classification standards will be accomplished in accordance with reduction-in-force procedures. An employee demoted in NASA without personal cause is entitled to special consideration for repromotion to any vacancy for which he is qualified and in the area of consideration at his former grade (or any intervening grade) before any attempt is made to fill the position by other means. Lists of employees demoted during reduction in force will be established by the EMPLOYER to avoid overlooking them when promotion opportunities occur.
>
> Section 28.07. Employees eligible for repromotion will be given special consideration for promotion vacancies prior to announcement of such vacancies under the Merit Promotion Plan. A file of repromotion consideration memoranda will be maintained in the Labor Relations Office for UNION reference. In the event the vacancy is subsequently announced, repromotion eligibles will be notified by a copy of such announcement.

Applicant contends that repromotion eligibles were not given special consideration as required by Sections 28.06 and 28.07, and that Announcements 76-35 and 76-36 were not sent to repromotion eligibles as required by 28.07.

I do not interpret the cited sections of Article 28 to include provisions for special consideration for repromotion eligibles for vacancies outside the bargaining unit.

Therefore Article 28 would not apply to the filling of vacancies for supervisory positions. Inasmuch as the vacancies filled by Sisson and Ledford are supervisory, the requirement to accord special consideration in Article 28 is not applicable to those positions.

In addition to the alleged violations of Articles 23, 25, and 28, the grievance cited violations of Articles 3 and 6. Applicant states that the allegation concerning Article 6 "has since been determined inappropriate." Therefore, I have not considered the applicability of Article 6 to the grievance.

Article 3, PROVISIONS OF LAW AND REGULATIONS, states:

> Section 3.01. In the administration of all matters covered by the Agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published NASA and MSFC policies and regulations in existence at the time the Agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities; subject to the provisions of Articles 8 and 46 of this Agreement.

Applicant contends that the Activity is required by the agreement to abide by existing and future laws and regulations, including the Federal Personnel Manual and NASA policies and regulations.

Article 3 is a restatement of Section 12(a) of the Order. This section recognizes the existence of laws, policies, and regulations which are applicable to employees and officials. I do not read Article 3 to permit an alleged violation of the Federal Personnel Manual (FPM) or NASA policies and regulations to be grievable under the negotiated grievance procedure. Therefore, I conclude that an allegation that the Activity violated the FPM or NASA policies and regulations is not subject to Article 3 of the agreement.

With respect to Applicant's contention that the Activity processed a similar grievance, it may be inconsistency on the part of the Activity to have rejected the instant grievance. However, in my view the Activity is not bound to accept a grievance solely because of having accepted a prior grievance on the same issue. Therefore, Applicant's argument is rejected.

Under all of the circumstances I conclude that the matters grieved are not subject to any of the Articles cited by the Applicant in its grievance. Therefore, I find that the Applicant's grievance of May 28, 1976, is not on a matter subject to the grievance procedure in the existing agreement.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this finding by filing a request for review with the Assistant Secretary with a copy upon this office and each of the parties to the proceeding and a statement of service filed with the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than close of business October 21, 1976.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Dated: October 6, 1976

LEM R. BRIDGES
Regional Administrator

Attachment:
LMSA 1139, Service Sheet

6-6-77

898

Labor Relations Advisor
Labor Disputes and Appeals Section
U. S. Department of the Navy
Office of Civilian Manpower Management
Washington, D. C. 20390

Re: U. S. Department of the Navy
Norfolk Naval Shipyard
Portsmouth, Virginia
Case No. 22-7401(AP)

Dear Sir:

I have considered carefully your request for review seeking reversal of the Regional Administrator's Report and Findings on Application for Decision on Grievability or Arbitrability in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the instant grievance filed by management is not grievable or arbitrable under the parties' negotiated agreement since the grievance was untimely filed.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U.S. DEPARTMENT OF LABOR

BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS

U.S. DEPARTMENT OF THE NAVY, NORFOLK
NAVAL SHIPYARD, PORTSMOUTH, VIRGINIA

Respondent

and

Case No. 22-7401(AP)

TIDEWATER VIRGINIA FEDERAL EMPLOYEES METAL
TRADES COUNCIL, (AFL-CIO), PORTSMOUTH, VIRGINIA

Applicant

REPORT AND FINDINGS
ON
APPLICATION FOR DECISION ON
GRIEVABILITY OR ARBITRABILITY

Upon an application for decision on grievability or arbitrability having been filed in accordance with Section 205.4 of the Rules and Regulations of the Assistant Secretary, the undersigned has completed his investigation and finds as follows:

On June 11, 1976, the respondent filed a grievance with the applicant pursuant to the parties' negotiated grievance procedure, alleging that the applicant violated Article 31, Section 4 of the negotiated agreement by withholding material facts relevant to a disciplinary action investigation and a grievance. A final decision by the applicant rejecting the respondent's June 11, 1976 grievance was issued July 30, 1976. On August 3, 1976, the respondent notified the applicant that it (the respondent) was invoking arbitration pursuant to the negotiated agreement. The instant application was filed August 9, 1976.

The sole unresolved question before the Assistant Secretary in this matter is whether the respondent's June 11, 1976 grievance was timely filed in accordance with Article 33, Section 5 of the parties' negotiated agreement, which states:

> "To be timely, a grievance must be initiated within 15 calendar days of the incident or knowledge of the incident giving rise to the grievance."

There is agreement between the parties that respondent first became aware on March 1, 1976 of the material facts allegedly concealed by the applicant. These facts were the names and testimony of witnesses on behalf of bargaining unit employee Tony Balknight with regard to a disciplinary pre-action investigation of Balknight and a subsequent grievance filed by Balknight over disciplinary action taken against him. Balknight had been represented by the applicant in both the pre-action and grievance proceedings.

The respondent's position is that it was first informed by Balknight on May 5, 1976 that he had been advised by the applicant's Chief Steward, Jesse Byrum, to withhold the facts concerning the witnesses. Furthermore, the respondent states that not until on or about May 13, 1976 did it confirm this information with Byrum himself. The applicant, on the other hand, states in its application that at a meeting held April 15, 1976, Byrum advised Ms. Lorraine G. Ratto, Head of the Employee Relations Division of the respondent, that he had withheld the names of the two witnesses. Neither party has provided documentary evidence in support of its position.

I am not persuaded by the respondent's argument that under Sections 205.1(b) and 205.2(b) of the Assistant Secretary's Rules and Regulations the applicant lacked status to file the instant application because only a grieving party may file an application for decision on grievability or arbitrability. In my view, it is the intent of the Rules and Regulations to allow either party in a grievance proceeding to file an application pursuant to Section 205.2. Moreover, I find no merit in the respondent's argument that the timeliness question herein should be referred to the parties' contractual grievance and arbitration machinery for resolution. On the contrary, the Order requires a decision by the Assistant Secretary in this matter. 1/

If one accepts the respondent's statement that it had no certain knowledge until on or about May 13, 1976, as to the applicant's alleged concealment of facts, the respondent's grievance of June 11, 1976 was nevertheless filed more than 15 days after knowledge of the incident giving rise to the grievance. Thus, it is clear that the grievance was untimely filed under the terms of the negotiated agreement.

In view of the above, I find that the respondent's grievance filed June 11, 1976 is not on a matter subject to the negotiated grievance procedure and is not arbitrable under the parties' negotiated agreement.

1/ Department of the Navy, Naval Ammunition Depot, Crane Indiana and Local 1415, American Federation of Government Employees, AFL-CIO, FLRC No. 74A-19, Report No. 63.

Pursuant to Section 205.6(b) of the Rules and Regulations of the Assistant Secretary, either party may request a review of this Report and Findings by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attn: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington,D.C. 20216. A copy of the request for review must be served on the undersigned, as well as on the other party. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than close of business December 8, 1976.

Dated: November 23, 1976

Kenneth L. Evans

Kenneth L. Evans, Regional Administrator
for Labor-Management Services

Philadelphia Region

Attachment: Service Sheet

Edward C. Maddox, President
American Federation of Government
Employees, Local 987, AFL-CIO
P. O. Box 1079
Warner Robins Air Force Base
Warner Robins, Georgia 31093

Re: Warner Robins Air Logistics Center
Warner Robins Air Force Base, Ga.
Case No. 40-7546(CA)

Dear Mr. Maddox:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case.

In agreement with the Regional Administrator, and based on his reasoning, I find that there is insufficient evidence to establish a reasonable basis for the complaint.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. – ROOM 300

November 11, 1976 ATLANTA, GEORGIA 30309

Mr. Edward C. Maddox, President
American Federation of Government
Employees, Local 987, AFL-CIO
Post Office Box 1079
Warner Robins, Georgia 31093

Re: Warner Robins Air Logistics Center
Robins Air Force Base, Georgia — Case No. 40-7546(CA)

Dear Mr. Maddox:

The above captioned case alleging violation of Section 19(a)(1), (2) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

You allege that on May 28 and June 1, 4 and 9, 1976, Mr. James Gibbs, Executive Vice President of the Local, was denied "a reasonable amount of official time" to perform representational duties.

It is alleged that the denial represented a unilateral implementation of policy and was intended to discourage membership and participation in the labor organization as guaranteed under Section 1 of the Order, thereby resulting in 19(a)(1), (2) and (6) violations of the Order.

The Respondent denies that it has violated 19(a)(1), (2) and (6) of the Order and urges dismissal of the complaint on various grounds.

One of the Respondent's arguments for dismissal is based on 19(d) of the Order. Respondent does so because Complainant on June 21, 1976, filed a grievance pursuant to the negotiated grievance procedure. Respondent argues that the issue raised in the grievance is the same issue that is raised in the complaint.

The grievance charges that Respondent violated the negotiated agreement and an Air Force Regulation because Respondent was not "allowing employees or their representatives any official time to prepare a grievance." The complaint alleges, in substance, that by implementing

a policy restricting the use of official time by Gibbs on four separate dates, both Gibbs and other employees were adversely affected in the exercise of their rights assured by Section 1 of the Order.

Section 19(d) provides, in relevant part:

> Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures.

I find there is a distinction between the issue raised in the grievance and the issue raised in the complaint. The grievance deals with employees and their representatives with respect to official time to prepare a grievance. The complaint focuses on the Executive Vice President having been denied official time to carry out representational duties as Executive Vice President. Accordingly, as the issues are not the same, dismissal on the grounds of 19(d) is not warranted.

I also reject Respondent's argument that the complaint lacks specificity. While it is true that the complaint itself did not state what the previous policy was, how it operated, when it existed and other details, this deficiency has not imposed upon the Respondent a burden which hinders the Respondent in its ability to respond to the complaint. Respondent has not shown that it was denied due process. Indeed, Respondent is well aware of what the policy concerning official time for the Executive Vice President may have been. Accordingly, dismissal of the complaint is not warranted on the grounds that the complaint lacks specificity.

Respondent also raises as a defense Report No. 49. That Report issued February 15, 1972, by the Assistant Secretary provides:

> It was concluded that where a complaint alleges as an unfair labor practice, a disagreement over the interpretation of an existing collective bargaining agreement which proves a procedure for resolving the disagreement, the Assistant Secretary will not consider the problem in the context of an unfair labor practice but will leave the parties to their remedies under their collective bargaining agreement.

Investigation discloses that the current labor agreement executed April 22, 1976, was effective from the date of approval, i.e., May 24, 1976. Negotiations for that agreement commenced in the fall of 1975; it replaced

an agreement. The expired agreement included a provision which provided that a steward would be allowed a reasonable amount of time to carry out his steward duties. In negotiating the current agreement, the parties were unable to agree on the question of official time for stewards. 1/ The parties agreed that an impasse was reached. Accordingly, the matter was referred to the Federal Service Impasses Panel (FSIP). ARTICLE 8, Section e of the current agreement reads as follows:

> IMPASSE (Amount of Official Time Allowed Union Stewards)

Respondent also urges dismissal on the grounds that the complaint should not be considered in the context of an unfair labor practice but rather within the context of the negotiated grievance procedure.

I find that Report No. 49 is not dispositive, that the issue raised in the complaint is not covered in the current labor agreement. This is so in the light of mutual agreement that there is no provision in the labor agreement covering official time for union stewards. But beyond that, there is no contractual provision covering official time for union officers. Respondent contends that Gibbs, the Executive Vice President has not been designated as chief steward or as steward. This is not disputed. In any case, whether Gibbs is a chief steward, steward or an officer, the current contract is silent on official time allowed for stewards or union officers. Therefore, dismissal is not warranted on the basis of Report No. 49.

At negotiation meetings that were held prior to the execution and approval of the current agreement, the parties discussed not only official time but who would be given time for representational purposes. At the meeting held on October 30, 1975, after an exchange of proposals and counter proposals, the union agreed that the Vice President, as such, would not perform representational duties. Moreover, ARTICLE 8, Section c provides, in part:

> Where a steward has been designated and is available, upper level stewards or union officers will not be used in place of lower level stewards. (emphasis supplied)

1/ Notices of Hearing in Case No. 40-7514(CA) and Case No. 40-7585(CA) were issued on October 21, 1976, and October 26, 1976, respectively. The cases were consolidated on October 26, 1976. The Respondent and Complainant in each of those cases is the same as in the subject case. The fundamental issue in those cases involves the Respondent's implementation of the policy governing and restricting official time for stewards to perform authorized representational functions.

The contractual provision appears to be a restatement of what both parties had agreed upon during contract negotiations. The Complainant, having agreed that the Executive Vice President would not perform representational duties, the Respondent's subsequent restriction of official time for Gibbs does not constitute a unilateral change in personnel policies and practices in derogation of the exclusive representative.

Having so found, there is no basis for concluding that Respondent has discouraged Gibbs or any unit employee in the exercise of his rights assured by the Order in violation of Section 19(a)(1) or (2).

For the foregoing reasons, I find that there is no basis for a 19(a)(6) complaint.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business November 26, 1976.

Sincerely,

LEM R. BRIDGES
Regional Administrator
Labor-Management Services Administration

cc: Michael A. Deep
Attorney Advisor
Office of Staff Judge Advocate
Warner Robins Air Logistics Center/JA
Robins Air Force Base, Georgia 31098

Jerry M. Brasel
Captain, USAF
Warner Robins Air Logistics Center
Robins Air Force Base, Georgia 31098

6-6-77

James R. Rosa, Staff Counsel
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Ave., N. W.
Washington, D. C. 20005

900

Re: Department of the Air Force
Headquarters 4756th Air Base
Group (ADCOM)
Tyndall Air Force Base, Florida
Case No. 42-3566(CA)

Dear Mr. Rosa:

I have considered carefully your request for review, seeking reversal of the Acting Regional Administrator's dismissal of certain portions of the complaint in the above-named case, which alleges violations of Section 19 (a)(1), (2) and (4) of Executive Order 11491, as amended.

The complaint involved six allegations. The Acting Regional Administrator dismissed the complaint with regard to allegations numbered 1, 2, 3, and 6, but found that a reasonable basis exists with regard to allegations numbered 4 and 5. In agreement with the Acting Regional Administrator, and based on his reasoning, I find that further proceedings on allegations 1, 2, 3 and 6 are unwarranted.

Accordingly, the request for review, seeking reversal of the Acting Regional Administrator's dismissal of certain allegations in the complaint, is denied. The case is remanded to the Regional Administrator for appropriate action with regard to allegations numbered 4 and 5.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1371 PEACHTREE STREET, N. E. — ROOM 300

November 16, 1976 ATLANTA, GEORGIA 30309

Mrs. Margaret Bock, President
Local 3240, American Federation
of Government Employees, AFL-CIO
922 Huntington Drive
Panama City, Florida 32401

Re: Department of the Air Force
Headquarters 4756th Air Base Gr. (ADCOM)
Tyndall Air Force Base, Florida
Case No. 42-3566(CA)

Dear Mrs. Bock:

The above captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully.

I have considered the complaint alleging the following allegations:

Allegation No. 1. On or about March 5, 1976, Col. Churchill stated to you, "You better know what you're talking about or I'll file one on you."

Allegation No. 2. On or about October 12, 1975, Mr. Costner told you that you would never work on another wage survey.

Allegation No. 3. On or about January 11, 1976, you were terminated by the Respondent because of your activities on behalf of and your affiliation with the Complainant.

Allegation No. 4. On or about January 11, 1976, Cecile (Sue) Brown was downgraded.

Allegation No. 5. On or about January 11, 1976, Bill Simmons was downgraded.

Allegation No. 6. On or about November 9, 1975, Myrtis Bolen was adversely affected in a reduction in force as a result of an error in the service computation date.

I intend to issue notice of hearing pursuant to Section 203.9 of the Regulations of the Assistant Secretary concerning Allegations 4 and 5. Notice of hearing will be issued unless there is a written settlement agreement which is approved by the undersigned. The proposed notice of hearing will be limited to Section 19(a)(1) and (2) of the Order.

It does not appear, however, that there is a reasonable basis for complaint on the remaining allegations, i.e. numbers 1, 2, 3 and 6.

With respect to Allegations 2 and 6, the precomplaint charge was not timely filed. Section 203.2(a)(2) of the Regulations of the Assistant Secretary provide that the charge must be filed within six (6) months of the occurrence of the alleged unfair labor practice. As the charge, dated June 8, 1976, was filed more than six months after the occurrence of the alleged unfair labor practice, the complaint is clearly untimely filed with respect to the above noted allegations.

With respect to Allegation 1, investigation discloses that the remark attributed to Colonel Churchill was made while you were discussing a complaint with a management official. No employees were present at the time. Even if Colonel Churchill said that he would file a complaint against you, there is insufficient evidence to draw an inference that the remark, made to you alone, was intended to discourage you from filing complaints or otherwise utilizing the Executive Order. Moreover, at the time the remark was made, you were no longer employed by the Respondent; therefore, there could have been no threat against you as an employee, because of Colonel Churchill's conduct. Accordingly, in light of the above there is no basis for a complaint under Section 19(a)(1).

With respect to Allegation 3, investigation discloses that on December 29, 1975, you filed an adverse action appeal under the provisions of Chapter 11, AFR 40-7 contesting a forthcoming reduction in force which would affect your employment. On January 28, 1976, a hearing was held before a hearing examiner. The hearing examiner considered the issue of anti-union discrimination in her report.

Section 19(d) of Executive Order 11491, as amended, provides in relevant part:

> Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. (emphasis supplied)

As the issue of discrimination because of your union activities was raised under the agency grievance procedure, it may not be raised under Section 19 of the Order. Accordingly, there is no basis for a 19(a)(1), (2) and (4) complaint with respect to Allegation 3.

I am, therefore, dismissing the complaint with respect to Allegations 1, 2, 3 and 6.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and all other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business December 1, 1976.

Sincerely,

William D. Sexton

WILLIAM D. SEXTON
Acting Regional Administrator
Labor-Management Services Administration

cc: Mr. Gene Kelley
Personnel Specialist, CCPO
Building 761
Tyndall Air Force Base, Florida 32401

Fifth District, AFGE
West Clinton Building, Room 432
2109 Clinton Avenue, West
Huntsville, Alabama 35805

Mr. Earl Ricketson
AFGE National Representative
Post Office Box 328
Alma, Georgia 31501

Mr. Edmund K. Brehl, Captain, USAF
JAD
Headquarters TAC
Langley Air Force Base, Virginia 23665

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

June 23, 1977 901

Mr. Herbert Cahn
President, Local 476
National Federation of Federal
Employees
P.O. Box 204
Little Silver, New Jersey 07739

Re: U.S. Army Satellite
Communications Agency
Fort Monmouth, New Jersey
Case No. 32-4792(CA)

Dear Mr. Cahn:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 19(a)(1) (2) and (4) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that the evidence is insufficient to establish a reasonable basis for the instant complaint and that, consequently, further proceedings in this matter are unwarranted. Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
NEW YORK REGIONAL OFFICE
Suite 3515
1515 Broadway
New York, New York 10036

December 16, 1976 In reply refer to Case No. 32-4792(CA)

Mr. Herbert Cahn, President
Local 476
National Federation of Federal Employees, Ind.
P. O. Box 204
Little Silver, New Jersey 07739

Re: U. S. Army Satellite
Communications Agency,
Fort Monmouth, New Jersey

Dear Mr. Cahn:

The above-captioned case alleging a violation of Section 19 of Executive Order 11491, as amended, has been investigated and considered carefully. It does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

Your complaint alleges that the U. S. Army Satellite Communications Agency has violated Sections 19(a)(1), (2), and (4) of the Order by mishandling the request of Mr. Peter Kennedy to have a cost reduction suggestion reconsidered, and that, as a result, the image of union effectiveness has been harmed.

In response to the complaint, the Respondent has maintained that inasmuch as the handling of the suggestion since September 7, 1976, when the Complainant first became involved with the Respondent in this matter, has been adequate, no harm has been done to the union's image.

Under the circumstances I find, based on the evidence you have furnished in support of your complaint, that the Respondent's alleged delay in the processing of Mr. Kennedy's suggestion cannot be viewed as violative of Section 19(a)(1). Thus, the Assistant Secretary concluded in Office of Economic Opportunity, Region V, Chicago, Illinois, A/SLMR No. 334, that

where an agency improperly failed to apply the provisions of a grievance procedure established unilaterally by the agency, such a failure could not be said to interfere with rights assured under the Order, and thereby be violative of Section 19(a)(1), particularly where no evidence of discriminatory motivation or disparity of treatment based on union membership considerations had been presented. In Mr. Kennedy's case, a request for reconsideration of a cost reduction suggestion was submitted in accordance with advice from higher level agency authority. The delays alleged to have occurred in the processing of that request took place within the framework of a procedure established by the Department of the Army. Further, no evidence was presented to show that the delays or mishandling occurred in connection with a bilaterally established procedure, or that the delays or mishandling that took place were based on discriminatory motivation or disparity of treatment based on union membership considerations.

With respect to your allegation of a violation of Section 19(a)(2) and 19(a)(4) of the Order, I note that you have submitted no evidence, aside from the citation of these Sections on the complaint form, that would support a finding that the Respondent engaged in violative conduct within the meaning of either of these Sections. Additionally, you have submitted no evidence that a pre-complaint charge was filed with the Respondent alleging a violation of either Section 19(a)(2) or 19(a)(4), as required by Section 203.2 of the Regulations of the Assistant Secretary.

I am, therefore, dismissing the complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATT: Office of Federal Labor-Management Relations, U. S. Department of Labor, Washington, D. C. 20216, not later than the close of business January 4, 1977.

Sincerely yours,

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

cc: Colonel Fred M. Knipp, Commander, USASATCOM Agency
Paul Coleman, Chief, Management-Employee Relations Branch

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

June 23, 1977

902

Mr. Henry H. Robinson
Assistant Counsel
National Treasury Employees Union
8301 Balcones Drive - Suite 315
Austin, Texas 78759

Re: Internal Revenue Service
Oklahoma City District
Case No. 63-7017(CA)

Dear Mr. Robinson:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that the evidence is insufficient to establish a reasonable basis for the instant complaint and that consequently, further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 Office of The Regional Administrator Kansas City, Missouri 64106

January 5, 1977

Mr. Henry H. Robinson
Assistant Council
National Treasury Employees Union
8301 Balcones Drive
Suite 315
Austin, Texas 78759

Re: 63-7017(CA)

Dear Mr. Robinson:

The above-captioned case alleging violations of Section 19(a)(1) and (6) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted in relation to your complaint in that you have failed to comply with provisions of Section 203.6(e) of the Regulations of the Assistant Secretary which require the Complainant to bear the burden of proof that a violation of the order may have occurred. The complaint alleges that Mr. Clyde Bickerstaff, District Director, Internal Revenue Service, Oklahoma City, Oklahoma decreed that NTEU representatives could interview employees only if the employees took anual leave or were otherwise in an off-duty status. It was alleged that the failure to allow employees to be interviewed on administrative time by union representatives, while at the same time granting administrative time to those same employees to provide information to management representatives, constitutes an interference with the NTEU's duty to effectively represent employees, constitutes discrimination against those employees who wish to assist or be represented by a labor organization, denies rights assured by the Executive Order, and blatantly conflicts with the collective bargaining agreement in effect between the NTEU and the Internal Revenue Service.

Although the Internal Revenue Service does not deny its refusal to allow the union to interview witnesses on government time in preparation for a grievance arbitration hearing, I do not find anything in this denial which could be deemed violative of the Order. In this regard you have failed to show that these witnesses would have been unavailable otherwise, you have failed to demonstrate how this might blatantly violate the Multi-District Agreement, you have failed to show that the denial constituted a change in working conditions or that any other effect was produced by the denial which might have violated the Order. The decision of the Federal Labor Relations Council on appeal from the Assistant Secretary's

Decision in A/SLMR No. 485, Department of the Air Force, Basé Procurement Office, Vandenberg Air Force Base, California, FLRC No. 75A-25, November 19, 1976, is controlling, and points out that there is no inherent right under the Order for the conduct of such activity as you undertook herein on official time.

It is my view that you have failed to allege any actions which constitute a violation of Executive Order 11491, as amended.

I am, therefore, dismissing your complaint in its entirety.

Pursuant to Section 203.8(c) of the Regualtions of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review. Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, not later than the close of business January 20, 1977.

CULLEN F. KEOUGH
Regional Administrator
for Labor-Management Services

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

June 24, 1977 903

George H. Jacobs
P. O. Box 667
San Mateo, California 94401

Re: AFGE, Local 2723 and
George H. Jacobs
Case No. 70-5689(CO)

Dear Mr. Jacobs:

This is in connection with your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, alleging violations of Section 19(a)(1), (2), and (6) of Executive Order 11491, as amended.

I find that your request for review is procedurally defective since it was filed untimely. Thus, the Regional Administrator issued his decision in the instant case on May 13, 1977. As you were advised therein, a request for review of that decision had to be received by the Assistant Secretary not later than the close of business on May 31, 1977. Your request for review mailed on May 29, 1977, was not received by the Assistant Secretary until after the date it was due.

Accordingly, since your request for review was filed untimely the merits of the subject case have not been considered, and your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

May 13, 1977

Mr. George H. Jacobs
P. O. Box 667
San Mateo, California 94401

Re: AFGE Local 2723 and
George H. Jacobs
Case No. 70-5689(CO)

Dear Mr. Jacobs:

The above-captioned case alleging violation of Section 19(b) of Executive Order 11491, as amended, has been carefully considered. It does not appear that further proceedings are warranted inasmuch as your complaint is procedurally deficient.

The Regulations of the Assistant Secretary for Labor-Management Relations provide that a charge in writing alleging the unfair labor practice must be filed with the party or parties against whom the charge is directed and that, when filing a complaint, the complainant shall submit supporting documents, including the pre-complaint charge, to the Area Administrator.

Your complaint was not accompanied with a copy of the pre-complaint charge. In several telephone conversations with the San Francisco Area Office and by letter dated March 14, 1977, you were requested to submit copies of the pre-complaint charge in order for your complaint to be duly processed. However, none of the material you submitted included a copy of the charge. Thus, there is no evidence that a charge was ever filed in this case as required by Regulations.

I am, therefore, dismissing the complaint.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, 200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business on May 31, 1977.

Sincerely,

Gordon M. Byrholdt

Gordon M. Byrholdt
Regional Administrator
Labor-Management Services

Attachment: Service Sheet

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20210

June 27, 1977

904

Mr. Robert J. Wilson
Staff Assistant to Regional Counsel
Internal Revenue Service
2 Embarcadero Center - Suite 900
San Francisco, California 94111

Re: Internal Revenue Service
San Francisco District
Case No. 70-5397(CA)

Dear Mr. Wilson.

I have considered carefully your request for review, seeking reversal of the Regional Administrator's Report and Findings on Grievability in the above-captioned case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the Applicant's grievance was timely filed and is grievable under the parties' negotiated agreement.

Accordingly, your request for review, seeking reversal of the Regional Administrator's Report and Findings on Grievability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
SAN FRANCISCO REGION

INTERNAL REVENUE SERVICE SAN FRANCISCO DISTRICT SAN FRANCISCO, CALIFORNIA - Activity and CYRIL L. LAWRENCE - Applicant	Case No. 70-5397

REPORT AND FINDINGS ON GRIEVABILITY

Upon an application for decision on grievability duly filed under Section 6(a)(5) of Executive Order 11491, as amended, an investigation of the matter has been conducted by the Area Administrator.

Under all of the circumstances, including the positions of the parties and the facts revealed by the investigation, the undersigned finds and concludes as follows:

An application for decision on arbitrability of a grievance was filed at the San Francisco Area Office on July 8, 1976, by Cyril L. Lawrence (herein called the Applicant), an employee of the Internal Revenue Service, San Francisco District (herein called the Activity). An amended application for a decision on grievability of the same grievance was filed on August 5, 1976. The grievance, concerning Applicant's failure to make the best-qualified list for an IRS merit-staffed job vacancy, was filed under the negotiated grievance procedure outlined in the current multi-unit contract between the Activity and the National Treasury Employees Union (herein called the Union). The grievance was rejected by the Activity as untimely.

The investigation discloses that the Applicant applied for the position of Attorney Estate Tax in the IRS San Francisco District in early January, 1976. By letter dated March 4, 1976, Applicant was notified by the Activity that he had not been selected for the position. On March 8, 1976, the Union received a copy of the vacancy promotion certificate, which listed the candidates rated best qualified. Applicant was away on business until March 11, 1976.

On March 12, 1976, Applicant learned from the Union that he had not made the best qualified list of candidates. That same day Applicant requested his rating score from the Activity. On or about March 15, 1976, Applicant learned that his score was 71.36. Best qualified required a score of 71 or better.

Applicant filed a grievance under the negotiated grievance procedure on March 25, 1976, alleging a violation of Article 7, Section 4, of the agreement concerning his failure to make the best qualified list. The Activity denied the grievance at Step 1 on the grounds that it was untimely filed. The grievance was processed through the remaining three steps of the grievance procedure and was rejected at each step by the Activity on the same grounds of untimeliness. The Applicant was not represented by the Union at any time during the process.

The Applicant attempted to invoke arbitration by letter dated June 21, 1976. The Activity denied arbitration on July 2, 1976, on the basis that Applicant was not a party to the agreement, and, therefore, could not invoke the arbitration procedures. On July 7, 1976, Applicant filed a second grievance on the timeliness of the first grievance. The second grievance was held in abeyance pending the decision of the Department of Labor. This grievance was withdrawn by Applicant on October 22, 1976.

The applicable negotiated agreement covering the professional and non-professional employees of certain IRS districts (including the San Francisco District) provides in pertinent part:

Article 35, Section 6

> Except as may be provided in other Articles of this Agreement, grievances will not be considered unless they are taken up with the Employer within fifteen (15) days after the incident which gives rise to the grievance or within fifteen (15) days after the aggrieved became aware of the matter out of which the grievance arises.

The Activity contends that, in order to be timely under Article 35, Section 6, of the agreement, the grievance must have been filed within 15 days from the date of Applicant's non-selection for the promotion, or within 15 days from the date of Applicant's receipt of the March 4th letter notifying him of his non-selection. Thus the Activity concludes that the grievance was untimely, since it was filed more than 15 days from either of these events.

The Activity also contends that Applicant lacks standing to file an application on arbitrability since he is not one of the parties to the negotiated agreement.[1] Further, the Activity contends that the Applicant lacks standing to file an application on grievability since the grievance was not rejected at any step of the grievance procedure, but was simply determined to be untimely. Moreover, the Activity maintains that the Regulations of the Assistant Secretary purporting to allow individuals to file applications are invalid, and the Department of Labor should not entertain such applications.

Applicant, on the other hand, contends that his grievance was timely filed under Article 35, Section 6, of the negotiated agreement, and should be considered by the Activity on the merits. In this regard, Applicant asserts that the 15-day period in which to file a grievance began to run on March 12, 1976, the date he first learned of his failure to make the best qualified list of candidates to be considered for the vacancy. Applicant contends that the March 4, 1976, letter should not be used as the beginning date of the 15-day period since the letter informed him only of his non-selection, rather than of his failure to make the best qualified list, which is the subject of his grievance.

In agreement with the Applicant, the undersigned finds that the grievance of March 25, 1976, specifically concerned Applicant's failure to make the best qualified list for the position of Attorney Estate Tax. The grievance alleges a violation of Article 7, Section 4, which deals with procedures for rating and referring the best qualified candidates, and cited Applicant's failure to make the merit staffing certification rather than his failure to be selected. Applicant was notified of his non-selection on March 4, 1976; however, he did not learn of his failure to make the best qualified list until March 12, 1976, or of his rating score until March 15, 1976. The language in Article 35, Section 6, specifically takes into account the fact that a party may not be aware of a grievable action until sometime after its occurrence and permits the 15 day period to begin from the date of notice of the action, rather than from the date of the action itself. Applicant filed the grievance within 15 days after learning of his failure to make the best qualified list and of his score. Therefore, the undersigned finds the grievance was timely filed.

With respect to the Activity's arguments as to Applicant's standing to file an Application, Section 205.1(c) of the Regulations of the Assistant Secretary provides that an application for a decision as to whether a grievance is subject to arbitration under an existing agreement may be filed only by the Activity or agency, or by the exclusive representative which is party to the agreement. Therefore, the undersigned agrees with the Activity that Applicant lacks standing to file an arbitrability application. However, Applicant

[1]This position was outlined in the Activity's letter of August 11, 1976, prior to the Activity's receipt of the amended application for a decision on grievability.

timely filed an amended application on grievability. Section 205.1(b) of the Regulations provides that any employee within the unit covered by the agreement may file an application on the grievability of a grievance filed under that agreement. In addition, the Federal Labor Relations Council (FLRC) report and recommendations on the amendments to the Order in 1971[2] refers to an employee's standing to file a grievance under a negotiated grievance procedure. The FLRC has never specifically referred to an employee's right to file a grievability application. However, since FLRC recognizes an individual's right to file a grievance under a negotiated grievance procedure, the undersigned concludes that the Assistant Secretary's Regulations allowing an individual to file an application on grievability are consistent with FLRC policy.

Regarding the Activity's argument that the grievance has never been rejected within the meaning of Section 205.2(b) of the Regulations, the undersigned finds that a party's determination of a procedural issue in a grievance which precludes the consideration of the merits of the grievance at each step of the procedure constitutes a rejection for the purposes of filing an application. Thus, the Federal Labor Relations Council has ruled that the Assistant Secretary is authorized to dispose of threshold procedural questions.[3] Consistent with this FLRC ruling, the Applicant has selected the Assistant Secretary to decide the procedural question of timeliness.

Finally, it should also be noted that the Activity has never alleged that the initial grievance was not on a matter covered by the parties' negotiated agreement. In this regard, Applicant was one of five highly qualified employees who applied for the vacancy. The four other employees made the best qualified list. Applicant grieved his failure to make the list under Article 7, Section 4, of the agreement. The undersigned finds that the failure to make the best qualified list deals with the interpretation and application of Article 7, Section 4, of the parties' agreement, and is therefore grievable under the parties' negotiated grievance procedure.

Thus, under all of the circumstances, the undersigned finds that Applicant's grievance is on a matter covered by the negotiated agreement and is timely filed.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary, an aggrieved party may obtain a review of this action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management

[2]"Labor Management Relations in the Federal Service", 1975. Pp 56-57.

[3]Naval Ammunitions Depot, Crane Indiana, FLRC No. 74A-19

Relations, U. S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator, as well as the other parties. A statement of service should accompany the request for review. The request must contain a complete statement setting forth the facts and reasons upon which it is based, and must be received by the Assistant Secretary not later than the close of business December 15, 1976.

Pursuant to Section 205.12 of the Assistant Secretary's Regulations, if a request for review, or a request for extension of time in which to file a request for review, is not filed, the parties shall notify the Regional Administrator for Labor-Management Services Administration, U. S. Department of Labor, in writing, within 30 days from the date of this decision as to what steps have been taken to comply herewith. The Regional Administrator's address is 450 Golden Gate Avenue, Room 9061, San Francisco, California 94102.

LABOR-MANAGEMENT SERVICES ADMINISTRATION

Gordon M. Byrholdt

GORDON M. BYRHOLDT
Regional Administrator
San Francisco Region
Room 9061, Federal Building
450 Golden Gate Avenue
San Francisco, California 94102

Dated: December 2, 1976

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

June 27, 1977 905

Mr. Robert J. Gorman
Chief Union Negotiator
GSA Region 5 Council of NFFE Locals,
National Federation of Federal Employees
8 East Delaware Place, #3R
Chicago, Illinois 60611

Re: General Services Administration
Region 5, Chicago, Illinois
Case No. 52-06489(RO)

Dear Mr. Gorman:

I have considered carefully your request for review seeking reversal of the Regional Administrator's dismissal of the petition in the above-captioned case.

In agreement with the Regional Administrator, and based on his reasoning, I find that the dismissal of the petition in this matter is warranted.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the instant petition, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

GENERAL SERVICES ADMINISTRATION,
REGION 5, CHICAGO, ILLINOIS,

Activity

and

Case No. 52-06489(RO)

GSA REGION 5 COUNCIL OF NFFE LOCALS,
NATIONAL FEDERATION OF FEDERAL EMPLOYEES,

Petitioner

and

LOCAL 2075, AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES, AFL-CIO,

Intervenor

DISMISSAL OF PETITION

On March 9, 1976, Robert J. Gorman on behalf of GSA Region 5 Council of NFFE Locals, National Federation of Federal Employees,1/ filed a petition in the above-cited case seeking a unit of all non-professional and non-supervisory GSA employees in the geographical area of the Lower Peninsula of the State of Michigan, except those employees in the exclusive unit represented by American Federation of Government Employees Local Union 1626 in Kalamazoo, and Battle Creek, Michigan, excluding all professional employees, management officials, supervisors, guards, and employees engaged in federal personnel work in other than a clearly clerical capacity. On March 29, 1976, American Federation of Government Employees, AFL-CIO, Local 2075 2/ made a request to the Detroit Area Administrator to intervene. The reason stated for intervention was that Intervenor held exclusive recognition for the unit sought in the instant petition. On April 13, 1976, the Detroit Area Administrator granted Intervenor's request for intervention. On April 2, 1976, Joseph H. James on behalf of Intervenor filed a challenge to the validity of Petitioner's showing of interest submitted in support of its petition. The basis of the challenge was that Region 5, General Services Administration 3/ did give permission and allowed Petitioner's representatives to solicit, on several occasions, membership and signatures for the purpose of challenging Intervenor as the exclusive unit in the Lower Peninsula of Michigan during duty hours. The Detroit Area Administrator proceeded to investigate Intervenor's

1/ Hereinafter referred to as Petitioner.
2/ Hereinafter referred to as Intervenor.
3/ Hereinafter referred to as Activity.

challenge to the validity of Petitioner's showing of interest, and upon completion of the investigation submitted the results to me for consideration as to whether or not a valid issue has been raised by the challenge to the showing of interest. I have carefully considered the Area Administrator's report and all evidentiary material submitted by the parties.

The investigation disclosed that Intervenor was certified as representative of the employees in the unit described in the instant petition by the Detroit Area Administrator on November 2, 1973, and continued as the exclusive representative at all times material herein. On or about September 9, 1975, Mr. Frank Swiatly, Petitioner representative, obtained permission from the Activity Buildings Manager in Detroit after clearance with the Activity Personnel Office in Chicago to conduct an organizational campaign directed toward Activity's employees employed at the Federal Building in Detroit on September 10 and 11, 1975. Subsequently, on these two days, Mr. Swiatly did station himself at various times at the 7½ Floor and the Basement of the Federal Building in Detroit which sites were immediately outside the "swing" or locker rooms of Activity's employees. A review of the signatures submitted on a list by Petitioner in support of its petition in the instant case reveals that five signatures dated September 10, 1975 and five signatures dated September 11, 1975 were obtained by Mr. Swiatly. The aforementioned signatures were all the signatures of employees employed by the Activity at the facility where Mr. Swiatly had obtained persmission from the Activity Buildings Manager to use space to conduct and did conduct an organizational campaign.

The Activity submitted to the Detroit Area Administrator a list of a total of 142 names of employees properly in the unit sought by Petitioner. The Area Administrator's investigation disclosed that the number of names submitted by Petitioner as proof of its showing of interest was a total of 46 which constituted approximately 33 percent of the employees in the unit claimed to be appropriate. Since Petitioner had not raised a question concerning representation through a pending representation petition on September 10 and 11, 1975, when it was furnished at the discretion of Activity with the use of Activity facilities to conduct an organizational campaign and clearly did not have equivalent status with Intervenor, the incumbent uion at the time, I find that the 10 signatures obtained on those two dates were obtained with Activity's improper assistance and may not be counted toward the 30 percent necessary for an adequate showing of interest required pursuant to Section 202.2(a)(9) of the Assistant Secretary's Rules and Regulations. 4/ In subtracting the 10 signatures from the total of 46 signatures submitted by Petitioner, the remaining valid 36 signatures constitute only 25 percent of the employees in

4/ U.S. Department of the Interior, Pacific Coast Region, Geological Survey Center, Menlo Park, California, A/SLMR No. 143, and Department of the Army, U.S. Army Natick Laboratories, Natick, Massachusetts, A/SLMR No. 263.

the unit claimed to be appropriate. Accordingly, having not met the 30 percent required showing of interest, the Petitioner's Petition must be and hereby is dismissed.

Pursuant to Section 202.6(d) of the Regulations of the Assistant Secretary, you may appeal this dismissal action by filing a request for review with the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA, Washington, D. C. 20216. A copy of the request for review must be served on the undersigned Regional Administrator as well as the Activity and any other party. A statement of such service should accompany the request for review.

The request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary not later than the close of business February 7, 1977.

Dated at Chicago, Illinois this 26th day of January 1977.

R. C. DeMarco, Regional Administrator
Labor-Management Services Administration
U. S. Department of Labor
1060 Federal Building
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
6-27-77

906

Ms. Mary M. Miles
P.O. Box 1252
Lawton, Oklahoma 73501

Re: National Federation of Federal Employees, Local 273
(Fort Sill, Oklahoma)
Case No. 63-7073(CO)

Dear Ms. Miles:

I have considered carefully your request for review seeking reversal of the Acting Regional Administrator's dismissal of the complaint in the above-captioned case, which alleges a violation of Section 19(b)(6) of Executive Order 11491, as amended.

In agreement with the Acting Regional Administrator, and based on his reasoning, I find that further proceedings in this matter are unwarranted.

Accordingly, your request for review, seeking reversal of the Acting Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
911 WALNUT STREET – ROOM 2200

816-374-5131 | Office of The Regional Administrator | Kansas City, Missouri 64106

December 30, 1976

Re: 63-7073(CO) National Federation of Federal Employees, Ind., Local 273, Lawton, Oklahoma (Respondent); Mary M. Miles and Catherine Calhoun (Complainants)

Ms. Mary M. Miles
P. O. Box 1252
Lawton, Oklahoma 73501

Ms. Catherine Calhoun
622 Bishop Road
Apartment L-16
Lawton, Oklahoma 73501

Dear Mesdames:

The above captioned case alleging violation of Section 19(b)(6) of Executive Order 11491 as amended, has been investigated and considered carefully.

On the basis of the evidence presented, it does not appear that further proceedings are warranted inasmuch as a reasonable basis for the complaint has not been established.

In your complaint, you alleged that the Respondent, in the person of then Local 273, President Jerry Jensen violated Section 19(b)(6) of the Order by his failure or refusal to bargain in good faith when, on April 7, 1976, he informed Mr. Wayne Sheets, Assistant Civilian Personnel Officer, that he did not wish to consult or negotiate on Reduction In Force actions pertaining to non-appropriated funds and appropriated fund employees. The Respondent in response to inquiry, states that Mr. Jensen did not state that he wished no longer to consult/negotiate on Reduction In Force actions. Rather, Mr. Jensen stated that he wished to discontinue the "courtesy call" and would negotiate when full facts were available on which negotiations might be based.

You were informed during your telephone discussions October 27, 1976 and in the letter concerning those discussions dated October 28, 1976 that your complaint and its attachments did not contain evidence in support of

your allegation that Local 273 Representative Jensen had failed or refused to negotiate in good faith on your behalf. You were also advised that it is well established in the case law of the Assistant Secretary that only a party to the bargaining relationship has standing to file charges that the other party has violated the obligation to negotiate in good faith. 1/

You were further advised that, absent your withdrawal of this complaint, it would be dismissed for failure to sustain the burden of proof imposed upon a complainant by Section 203.6(e) of the Assistant Secretary's Regulations. You have submitted no further evidence. No withdrawal Request, Form LMSA 1110, has been received. Based upon all the foregoing, I hereby dismiss this complaint in its entirety.

Pursuant to Section 203.8(c) of the Regulations of the Assistant Secretary, you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the Respondent. A statement of service must accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management, Relations, U. S. Department of Labor, 200 Constitution Avenue. N. W. Washington, D. C. 20216, not later than the close of business January 14, 1977.

Sincerely,

THOMAS R. STOVER
Acting Regional Administrator
Labor-Management Services

1/ A/SLMR #595, U. S. Department of Agriculture, Forest Service, Regional Office, Juneau, Alaska "... the obligation to confer and consult is owed by an employer to a labor organization which is the Collective Bargaining Representative of its employees...the obligation on the part of management to (bargain in good faith) run(s) to the labor organization and not to an individual." FLRC 76-A-63 (40-6700(CO)) Local 1858, American Federation of Government Employees, AFL-CIO, "...the right to challenge the obligation of a labor organization to meet or confer with an agency or Activity does not extend to an individual unit employee..."

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON
6-27-77

907

Mr. William Persina
Assistant Counsel
National Treasury Employees Union
1730 K Street, N. W. - Suite 1101
Washington, D. C. 20006

Re: Department of the Treasury
Internal Revenue Service
Chicago District, Illinois
Case No. 50-13155(CA)

Dear Mr. Persina:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint in the above-named case, which alleges violations of Section 19(a) (1) and (6) of Executive Order 11491, as amended.

In agreement with the Regional Administrator, I find that a reasonable basis for the instant complaint has not been established. Thus, I find that the alleged violations concern differing and arguable interpretations of the parties' agreement, and not a clear, unilateral breach of the contract by the Respondent. Under such circumstances, the aggrieved party's remedy for such matters lies within the grievance-arbitration machinery of the negotiated agreement, rather than through the unfair labor practice procedures. See Department of the Army, Watervliet Arsenal, Watervliet, New York, A/SLMR No. 624, and Federal Aviation Administration, Muskegan Air Traffic Control Tower, A/SLMR No. 534.

Accordingly, your request for review, seeking reversal of the Regional Administrator's dismissal of the complaint, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

UNITED STATES DEPARTMENT OF LABOR
BEFORE THE ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS
CHICAGO REGION

DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE (IRS),
AND IRS CHICAGO DISTRICT,
CHICAGO, ILLINOIS,

Respondent

and

Case No. 50-13155(CA)

NATIONAL TREASURY EMPLOYEES UNION
(NTEU), AND NTEU CHAPTER 10,

Complainant

DISMISSAL OF COMPLAINT

The complaint in the above-captioned case was filed on May 24, 1976, in the Office of the Chicago Area Administrator. It alleges a violation of Sections 19(a)(1) and (6) of Executive Order 11491, as amended. The complaint has been investigated and carefully considered. It appears that further proceedings are unwarranted, inasmuch as a reasonable basis for the complaint has not been established, and I shall therefore dismiss in its entirety the complaint in this case.

It is alleged that Respondent violated Sections 19(a)(1) and (6) of the Order when it, in a December 24, 1975 letter to the NTEU local union president, declared not negotiable a request by Complainant to negotiate "as to substance, impact and implementation" the abrogation of a check list of numerical factors type of evaluation format relating to certain employees of the Audit Division of the Chicago District. The request for negotiations in this matter was made by Complainant in a letter dated September 30, 1975, addressed to the Chicago district director.

The initial charge was provided by Complainant in a letter dated April 6, 1976, signed by the NTEU national president. Respondent's final decision was provided in a letter dated April 19, 1976, signed by its director, personnel division.

Investigation reveals that on September 29, 1975, in the context of a labor-management meeting, representatives of Complainant were advised that it was the Chicago District Audit Division's

intent to no longer make use of a check list method of employee performance evaluation. 1/ The local union president, in the above-referenced letter of September 30, 1975, demanded that Respondent "cease and desist from the practice of failing to rate factors on evaluations" until the matter be negotiated. Respondent, in a letter dated December 24, 1975, replied that such a request was denied because the discontinuance of the check list evaluation format was not negotiable. This was the case because only narrative evaluation recordation and evaluations associated with the Form 3861 were consistent with Article 9 of the Multi-District Agreement. 2/ Thus, Respondent maintained that the abrogation of the check list format was in full compliance with the negotiated agreement and that, therefore, the local union's request to negotiate was inappropriate as it pertained to a matter previously negotiated between the parties. Respondent has provided substantially the same reply in response to the Area Administrator's investigation of the complaint.

Complainant, however, maintains that Respondent is required to negotiate concerning its decision to cease using the check list format. It references Article 9, Section 1(B) of the agreement 3/ which specifies the two kinds of evaluations covered in the article (i.e., those used in anticipation of a promotional action and any other narrative recordation of material maintained by a supervisor) and concludes that "the contract language is silent as to what format these evaluations should take."

1/ This check list method of evaluation is contained in Department of the Treasury, IRS, Form RC MW 3-454 (9-69), entitled "Field Audit Performance Appraisal." This form was associated with supervisory evaluation of unit employees based on specific examples of employee performance and was retained by the supervisor for later use in preparing a narrative evaluation on the basis of which promotional considerations could be made.

2/ "Multi-District Agreement between Internal Revenue Service and National Treasury Employees Union," effective August 3, 1974 between the various IRS District Offices and NTEU Chapters listed in Appendix A of the agreement including the Chicago District and NTEU Chapter 10.

3/ Article 9 ("Evaluations of Performance") Section 1(B) of the Multi-District Agreement reads (in part): "Evaluations . . . . are defined as: 1. Promotion appraisals as provided for in Article 7; and 2. Any other narrative recordation or the recordation of any material maintained by a supervisor which may have an adverse effect on an employee's evaluation and/or rating by a Ranking Panel." Article 7 ("Promotions/Other Competitive Actions"), Section 4(B) reads (in part): "An employee will be evaluated on a form appropriate for his position as attached in Appendices C, D, E, F, and G."

An examination of the Multi-District Agreement between the parties reveals that Article 9, Section 1(B) clearly defines the scope of performance appraisals applicable to unit employees by reference to Article 7, Section 4(B) of the agreement, incorporating appraisal forms attached in Appendices C, D, E, F and G to the agreement, and referring to "any other narrative recordation . . . . (emphasis supplied).

These appendices clearly refer to Treasury - IRS Forms 3861D, 3861E, 3861B, 3861C, and 3861A respectively and nothing in the relevant appendices or agreement language can be interpreted as supporting continued usage of the independent check list format provided by Form MW 3-454. It is additionally clear that any other recordation of evaluation factors must be limited to those narrative in format. The Field Audit Performance Appraisal (Form MW 3-454) is clearly non-narrative in format, providing for a check list means of evaluation as its central feature.

In any event, the aforementioned facts adduced as a result of the parties' submissions show differing and arguable interpretations of the parties' agreement and not a clear, unilaterial breach of the agreement on the part of the Respondent. In such a situation, the aggrieved party's remedy for such matters lies within the grievance machinery of the negotiated agreement rather than through the unfair labor practice procedures.

Having considered carefully all the facts and circumstances in this case, including the charge, the complaint and all information supplied by the Complainant, the complaint in this case is hereby dismissed in its entirety.

Pursuant to Section 203.8(c) of the Regulations, the Complainant may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this Office and the Respondent. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, Attention: Office of Federal Labor-Management Relations, U. S. Department of Labor, LMSA,

200 Constitution Avenue, N. W., Washington, D. C. 20216, not later than the close of business December 17, 1976.

Dated at Chicago, Illinois this 2nd day of December, 1976.

R. C. DeMarco, Regional Administrator
United States Department of Labor
Labor-Management Services Administration
Federal Building, Room 1060
230 South Dearborn Street
Chicago, Illinois 60604

Attachment: LMSA 1139

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

June 27, 1977 908

John W. Mulholland, Director
Contract Negotiation Department
American Federation of Government
Employees, AFL-CIO
1325 Massachusetts Ave., N.W.
Washington, D.C. 20005

Re: U.S. Customs Service
Region II, New York
Case No. 30-6859(GA)

Dear Mr. Mulholland:

I have considered carefully your request for review, seeking reversal of the Regional Administrator's dismissal of the application for decision on grievability or arbitrability in the above-named case.

The evidence reveals that you filed an application for decision on grievability or arbitrability in the above-named case on April 1, 1976, although a final written rejection of a request for arbitration by the Activity had not yet been sought and received. Thus, in agreement with the Regional Administrator, and based on his reasoning, I find that the instant application is procedurally defective, as an application will not be processed by the Assistant Secretary until after all steps of a negotiated procedure have been exhausted, and arbitration (where, as here, it is provided for in the parties' agreement) is invoked and rejected in writing. See, in this connection, Section 205.2(b) of the Assistant Secretary's Regulations, Report On A Ruling, Nos. 56 and 61, and Request For Review No. 870 (copies attached).

Under these circumstances, your request for review, seeking reversal of the Regional Administrator's dismissal of the application for decision on grievability or arbitrability, is denied.

Sincerely,

Francis X. Burkhardt
Assistant Secretary of Labor

Attachment

U. S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
1515 BROADWAY Suite 3515
NEW YORK, NEW YORK 10036

OFFICE OF
THE REGIONAL ADMINISTRATOR

December 9, 1976

Mr. George Palestro, Council President
AFGE, U. S. Customs, Region II
New York Council of Customs Locals, AFL-CIO
Room 454
6 World Trade Center
New York, N. Y. 10048

Re: U. S. Customs Service
Region II
Case No. 30-6859(GA)

Dear Mr. Palestro:

The above-captioned case, initiated by the filing of an Application for Decision on Grievability or Arbitrability under Section 6(a)(5) of Executive Order 11491, as amended, has been investigated and considered carefully.

It does not appear that further proceedings are warranted inasmuch as arbitration was not invoked under Section 6 of Article VIII of the Agreement between Department of the Treasury, U. S. Customs Service, Region II, New York, N. Y. and the Council of Customs Locals, AFL-CIO, 2652, 2768, 2899, and 2952.

The Assistant Secretary in Report on Ruling No. 56, a copy of which is enclosed, stated in part:

> For the purpose of computing the sixty (60) day filing period of an Application for Decision on Grievability or Arbitrability under Section 205.2(a) of the Assistant Secretary's Regulations, there must be a final written rejection after the arbitration clause is invoked. (Emphasis added)

Inasmuch as the Applicant failed to invoke arbitration, the Activity did not provide the Applicant with its final written rejection of the grievance as required by Report No. 56. Therefore, no determination can be made as to whether the grievance is on a matter subject to the grievance procedure in an existing agreement.1/

I am, therefore, dismissing the application in this matter.

Pursuant to Section 205.6(b) of the Regulations of the Assistant Secretary you may appeal this action by filing a request for review with the Assistant Secretary and serving a copy upon this office and the other parties. A statement of service should accompany the request for review.

Such request must contain a complete statement setting forth the facts and reasons upon which it is based and must be received by the Assistant Secretary for Labor-Management Relations, ATTN: Office of Federal Labor-Management Relations, U.S. Department of Labor, Washington, D.C. 20216, not later than the close of business December 27, 1976.

Sincerely yours,

BENJAMIN B. NAUMOFF
Regional Administrator
New York Region

Encl.

1/ In this respect, also see Request for Review Decision issued August 6, 1976 involving U.S. Army Missile Command, Redstone Arsenal, Alabama and AFGE Local 1858, Case No. 40-6799(GA), copy attached.