Supplemental Digest And Index of Published Decisions of the Assistant Secretary of Labor for Labor-Management Relations Pursuant to Executive Order 11491, As Amended, July 1, 1978 through December 31, 1978

Federal Labor Relations Authority

Supplemental Digest and Index of Published Decisions of the Assistant Secretary of Labor for Labor-Management Relations Pursuant to Executive Order 11491, As Amended, July 1, 1978 through December 31, 1978

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This edition covers the period of July 1, 1978 - December 31, 1978.
It supplements five editions of the Digest and Index covering
the period of January 1, 1970 - June 30, 1978.

This edition contains a Table of Contents and
Tables of Decisions and Reports on Rulings, each covering
the period of July 1, 1978 - December 31, 1978.

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PREFACE

This edition of the Supplemental Digest and Index (SDI) contains digests of all published decisions of the Assistant Secretary of Labor for Labor-Management Relations (A/S) pursuant to Executive Order 11491, as amended, from July 1, 1978 to December 31, 1978. Published decisions from January 1, 1970 to June 30, 1978, are digested and indexed in five previously published editions.

The Digest section summarizes significant decisional material and is arranged in a functional classification under major headings and sub-headings, listed in the Table of Contents. It covers: (1) decisions after formal hearing or stipulated record; (2) Reports on Rulings of the A/S on requests for review of field-level actions (no Reports on Rulings of Assistant Secretary were issued during this period); and (3) those rulings of the Federal Labor Relations Council which remanded cases to the A/S or modified his decisions.

The full text of A/S decisions are published in bound volumes entitled "Decisions and Reports on Rulings of the Assistant Secretary of Labor for Labor-Management Relations pursuant to Executive Order 11491, as amended." Effective January 1, 1979, the functions of the A/S were transferred to the Federal Labor Relations Authority. Past decisions of the A/S may now be read at any Regional Office of the Federal Labor Relations Authority.

The SDI is intended as a guide to material contained in the A/S's published decisions but should not be used as a substitute for the full text of such decisions, nor should its contents be construed as official pronouncements or interpretations of the A/S.

TABLE OF ABBREVIATIONS

AA	Area Administrator, Labor-Management Services Administration, U.S. Department of Labor (formerly Area Director, Labor-Management Services Administration)
AC Petition	Amendment of Recognition or Certification Petition
AD	Area Director, Labor-Management Services Administration; now referred to as Area Administrator, Labor-Management Services Administration
ALJ	Administrative Law Judge (formerly Hearing Examiner)
AO	Area Office, Labor-Management Services Administration
ARD	Assistant Regional Director for Labor-Management Services; now referred to as Regional Administrator, Labor-Management Services Administration
A/S	Assistant Secretary of Labor for Labor-Management Relations
A/SLMR No.	Assistant Secretary for Labor-Management Relations Decision Number
CU Petition	Clarification of Unit Petition
DI	Digest and Index of Published Decisions of the Assistant Secretary of Labor for Labor-Management Relations
EO	Executive Order 10988 where indicated; otherwise references are to Executive Order 11491 in cases filed prior to 11-24-71, and to Executive Order 11491, as amended, subsequent thereto
FLRC	Federal Labor Relations Council
FLRC No.	Federal Labor Relations Council Decision Number
GS	General Schedule
HE	Hearing Examiner (Title changed to Administrative Law Judge)
HO	Hearing Officer

LMSA	Labor-Management Services Administration
LMWP	Office of Labor-Management and Welfare-Pension Reports
NE	No entry for period covered
OFLMR	Office of Federal Labor-Management Relations, Labor-Management Services Administration
RA	Regional Administrator, Labor-Management Services Administration (formerly Assistant Regional Director for Labor-Management Services)
RA Petition	Agency Doubt as to Representative's Status Petition
R A/S No.	Report on Ruling of the Assistant Secretary Number
Regs	Regulations of the Assistant Secretary of Labor for Labor-Management Relations
SDI	Supplemental Digest and Index of Published Decisions of the Assistant Secretary of Labor for Labor-Management Relations
Sec.	Section
UC	Unit Consolidation Petition
ULP	Unfair Labor Practice
WB	Wage Board

05 00 00 GENERAL PROVISIONS

05 04 00 Definitions (Alphabetically Listed)
(See also: 20 20 00, "Employee Categories and Classifications")

No Entries

05 08 00 Coverage of Executive Order

No Entries

05 12 00 Evidence

No Entries

05 12 04 Request for LMSA Documents and LMSA Personnel at Hearings

No Entries

05 12 08 Admissibility at Hearings

No Entries

05 16 00 Advisory Opinions

No Entries

05 20 00 Concurrent Related Cases

No Entries

05 24 00 Role of NLRB Decisions

No Entries

05 28 00 Service

No Entries

05 32 00 Transitional Problems

No Entries

05 36 00 Official Time

No Entries

10 00 00 REPRESENTATION CASES: PRELIMINARY STAGES

10 04 00 Types of Petitions: Procedure (for substantive matters on petitions see: 20 00 00, "Representation Unit Determination"; 25 20 00, "Certification of Unit"; and 25 24 00, "Amendment of Recognition or Certification")

10 04 04 Representation, Filed by Labor Organization (RO)

No Entries

10 04 08 Agency Doubt as to Representative's Status (RA) (See also 20 16 00 "Special Situations")

No Entries

10 04 12 Decertification of Representative, Filed by Employee(s) (DR) (See also 20 16 00 "Special Situations")

No Entries

10 04 16 Clarification of Unit (CU) (See also 20 16 00 "Special Situations")

A/S dismissed CU aspect of petition involved in the proceeding where insufficient evidence was found to support the proposed accretion of the employees of two organizational entities of the Coast Guard to the existing unit of Coast Guard Headquarters employees where the disputed employees had not been affected by a reorganization and the record reflected that their organizational entities were in existence at the time of the Headquarter's unit certification in an election in which they were not included. (U.S. Coast Guard Headquarters, A/SLMR No. 1164)

10 04 20 Amendment of Recognition or Certification (AC) (See also 20 16 00 "Special Situations")

No Entries

10 04 24 National Consultation Rights

No Entries

10 04 28 Consolidation of Units (UC) (See also 20 16 00 "Special Situations")

No Entries

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10 08 00 Posting of Notice of Petition
(See 20 24 00 for Post-Decisional Items)

No Entries

10 12 00 Intervention
(See 20 24 00 for Post-Decisional Items)

No Entries

10 16 00 Showing of Interest
(See 20 24 00 for Post-Decisional Items)

No Entries

10 20 00 Labor Organization Status

No Entries

10 24 00 Timeliness of Petition

10 24 04 Election Bar

No Entries

10 24 08 Certification Bar

No Entries

10 24 12 Agreement Bar
(See also 10 44 00, "Defunctness")

A/S found that the parties' negotiated agreement became one of indefinite duration after February 8, 1977, and thus could not serve as a bar to a petition. A/S concluded that when the parties commenced negotiations immediately prior to and following the anniversary date of the agreement, it became unclear as to whether the parties intended to merely modify the existing agreement terminate the existing agreement and negotiate a new agreement with a different term, or continue the old agreement indefinitely pending completion of negotiations. (VA Hospital, Canandaigua, N.Y., A/SLMR No. 1077)

10 28 00 Status of Petitioner

No Entries

10 32 00 Qualifications to Represent Specified Categories of Employees

No Entries

10 36 00 Request for Review Rights

No Entries

10 40 00 Area Administrator's Action (Area Director)

No Entries

10 44 00 Defunctness
(See also: 10 24 12, "Agreement Bar")

No Entries

10 48 00 Blocking Complaints

No Entries

15 00 00 REPRESENTATION HEARING PROCEDURE

15 04 00 Role of Hearing Officer

No Entries

15 08 00 Motions

No Entries

15 08 04 General

A/S found it unnecessary to pass upon motion to dismiss RA petition on basis that it had been filed by wrong party in view of A/S ultimate dismissal of RA petition on other grounds. (Dept. of Energy, A/SLMR No. 1136)

15 08 08 Amendment of Petition

At the hearing, parties stipulated that an employee is engaged in Federal personnel work in other than a purely clerical capacity and, therefore, should be excluded from the unit. In the context of a unit clarification petition, such a stipulation is viewed as a motion to amend the petition in order to delete and, in effect, withdraw the petition as to the stipulated job classification. (Army Reserve, 166 th Support Group, Fort Buchanan, P.R., A/SLMR No. 1171)

15 12 00 Evidence and Burden of Proof

The parties having stipulated at the hearing that no temporary employees are presently employed by the Activity. A/S found that it would not effectuate the purposes and policies of the Order to clarify a unit in the absence of facts relating to actual employees. Accordingly, the petition, insofar as it sought to clarify the unit status of temporary employees, was dismissed. (Army Reserve, 166th Support Group, Fort Buchanan, P.R., A/SLMR No. 1171)

In view of the lack of sufficient evidence to make a determination regarding the supervisory status of two disputed employees, the A/S made no finding in this regard as to their unit eligibility. (Army Reserve, 166th Support Group, Fort, Buchanan, P.R., A/SLMR No. 1171)

15 16 00 Unfair Labor Practice Allegations

No Entries

15 20 00 Obligation of Parties

No Entries

15 24 00 Post-Hearing Submissions

No Entries

15 28 00 Remand

No Entries

15 32 00 Major Policy Issue

No Entries

20 00 00 REPRESENTATION UNIT DETERMINATIONS

20 04 00 Criteria

20 04 04 Community of Interest

A/S reaffirmed finding in A/SLMR No. 697 that claimed employees share a clear and identifiable community of interest. (Dept. of State, Passport Off., Chicago Passport Agency, A/SLMR No. 1108)

20 04 08 Effective Dealings
(See 20 04 12, "Efficiency of Operations")

The absence of a successfully negotiated agreement, where there has been a long bargaining history, is not, by itself, sufficient basis to conclude that a unit has failed to promote effective dealings. (FAA, Atlanta Airway Facilities Sector, A/SLMR No. 1086)

After considering evidence developed, as a result of a remand by the FLRC for clarification in light of the principles enunciated by the FLRC in the DCASR decision, A/S found that proposed unit would promote effective dealings. (Dept. of State, Passport Off., Chicago Passport Agency, A/SLMR No. 1108)

20 04 12 Efficiency of Operations
(See also 20 04 08, "Effective Dealings")

After considering evidence developed, as a result of a remand by the FLRC for clarification in light of the principles enunciated by the FLRC in the DCASR decision, A/S found that proposed unit would promote efficiency of agency operations. (Dept. of State, Passport Off., Chicago Passport Agency, A/SLMR No. 1108)

20 04 16 Agency Regulations and Parties' Stipulations Not Binding on Assistant Secretary
(See also: 25 12 04, "Challenges, Eligibility of Employees", for Stipulations of Parties Related to Challenges.)

No Entries

20 04 20 Previous Certification

A/S found previously certified unit continued to constitute an appropriate unit where record did not contain any newly discovered or previously unavailable facts or changed circumstances since the recertification of the exclusive representative. (FAA, Atlanta Airway Facilities Sector, A/SLMR No. 1086)

20 08 00 Geographic Scope

No Entries

20 08 04 World-wide

No Entries

20 08 08 Nation-wide

A/S stated that although a nationwide unit would result in reduced fragmentation, such a determination based on reduced fragmentation alone would be inappropriate. (Dept. of State, Passport Off., Chicago Passport Agency, A/SLMR No. 1108)

Following reorganization which established new agency, A/S found that nation-wide unit of employees continues to remain appropriate as one organizational element within new agency was found to be a "successor" employer to employees in previously recognized unit. (Dept. of Energy, A/SLMR No. 1136)

Nation-wide unit of employees no longer found appropriate following reorganization which created a new organizational entity. (Dept. of Energy, A/SLMR No. 1136)

20 08 12 State-wide

No Entries

20 08 16 City-wide

Claimed unit of professional and nonprofessional employees, consisting of all the agency's eligible employees, all of whom are employed in Washington, D.C., found appropriate. (Fed. Election Comm'n, A/SLMR No. 1076)

20 12 00 Organizational Scope

20 12 04 Agency-wide

Claimed unit of professional and nonprofessional employees, consisting of all the agency's eligible employees, found approprite. (Fed. Election Comm'n, A/SLMR No. 1076)

20 12 08 Activity-wide

Activity-wide unit of all Chicago Passport Agency Employees found appropriate. (Dept. of State, Passport Off., Chicago Passport Agency, A/SLMR No. 1108)

20 12 12 Directorate-wide

No Entries

20 12 16 Command-wide

No Entries

20 12 20 Headquarters-wide

Following reorganization which created new organizational entity, A/S found Headquarters-wide unit of employees appropriate. (Dept. of Energy, A/SLMR No. 1136)

A/S dismissed aspect of petition at issue where insufficient evidence was found to support proposed accretion sought by exclusive representative of headquarters unit of the employees of two small organizational entities of Coast Guard located in Washington, D.C., where there had been no reorganization affecting disputed employees and employees' organizational entities were in existence at time of Headquarters unit certification. (U.S. Coast Guard Headquarters, A/SLMR No. 1164)

20 12 24 Field-wide

Field-wide portion of nation-wide unit found no longer appropriate following agency reorganization. (Dept. of Energy, A/SLMR No. 1136)

20 12 28 Region-wide

A/S noted that petitioned-for activity-wide unit is part of the only organizational level in the Passport Off. below the Nat'l Off. level and can be compared to regional offices in other agencies. (Dept. of State, Passport Off., Chicago Passport Agency, A/SLMR No. 1108)

Region-wide unit of all employees found appropriate where employees shared a clear and identifiable community of interest and where such unit would promote effective dealings and efficiency of agency operations, particularly in view of established bargaining history in the petitioned-for unit. (FAA, Airway Facilities Div., Pacific Asia Region, A/SLMR No. 1130)

20 12 32 Division-wide

No Entries

20 12 36 Area-wide

No Entries

20 12 40 District-wide

No Entries

20 12 44 Branch-wide

No Entries

20 12 48 Base-wide

No Entries

20 12 52 Section-wide

No Entries

20 12 56 Multi-Installation

No Entries

20 12 60 Single Installation

No Entries

20 12 64 Occupational Classification

Unit of Sign Shop employees found appropriate where unit was a functionally distinct group of employees who share a community of interest separate and distinct from other employees of the Activity and where no evidence that effective dealings and efficiency of agency operations were adversely affected. (GSA, Region 3, A/SLMR No. 1105)

20 16 00 Special Situations

20 16 04 Severance

A/S found that the petition in the instant case, in effect, constituted an appropriate attempt to sever a unit of nonprofessional employees from the existing mixed unit of supervisory and nonsupervisory employees. (Dept. of Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, Ariz., A/SLMR No. 1151)

Petition seeking, in effect, the severance of the employees of the newly established DCASPRO, IBM Owego, from the DCASMA, Binghamton, unit, represented exclusively by the NAGE denied where reorganization did not result in any change in the day-to-day terms and conditions of employment of the employees involved, including their physical location, job function, and immediate supervision. In addition both DCASMA, Binghamton, and the DCASPRO, IBM Owego, continued to report to the same organizational command, they continued to be serviced by the same personnel office, they remained in the same areas of consideration for promotions and the same competitive area for reduction in force procedures, and they had an established history of collective bargaining. (DCASR, Boston, Mass., and DCASMA, Binghamton, N.Y., A/SLMR No. 1166)

20 16 08 Accretion

No accretion found and CU petition dismissed where A/S found, among other things, that employees in a Sign Shop unit continued to share a community of interest separate and distinct from that of other employees, and that there was no evidence that effective dealings or efficiency of agency operations had been adversely affected. (GSA, Region 3, A/SLMR No. 1105)

Following reorganization, employees previously employed in another agency were found to have accreted into a "successor" unit existing prior to the reorganization. (Dept. of Energy, A/SLMR No. 1136)

A/S concluded that employees of the 924th TAG are within the exclusively recognized unit represented by the AFGE at Bergstrom AFB. He found that when the 924th TAG was transferred on March 31, 1976, from Ellington AFB to Bergstrom, the employees of the 924th TAG accreted into unit represented by the AFGE and, further, that they continued to remain a part of such unit. RO petition deemed untimely with respect to negotiated agreement between Bergstrom and AFGE. (Dept. of Air Force, 924th TAG Reserve, Bergstrom AFB, Tex., A/SLMR No. 1102)

20 16 08 Accretion (Cont'd)

A/S dismissed aspect of petition at issue where insufficient evidence was found to support accretion sought by exclusive representative of Headquarters unit of the employees of two small organizational entities of Coast Guard located in Washington, D.C. where the disputed employees had not been affected by any reorganization and they did not participate in the election in which the Headquarters unit was certified. (U.S. Coast Guard Headquarters, A/SLMR No. 1164)

Employees of newly established Training Institute were found not to have accreted into existing unit where it was noted that the Institute had no organizational relationship with HEW, Region VIII, but, instead, was administratively under the control of its headquarters component in Washington, D.C. and that the Institute was physically located in Region VIII only because of its geographic proximity to those employees for whom it would provide training, and not because of any organizational relationship. (HEW, Office of the Secretary, A/SLMR No. 1168)

20 16 12 Eligibilty

No Entries

20 16 16 Residual Employees

A/S found a residual unit of all unrepresented employees appropriate since such a unit met the three criteria of Section 10(b) of the EO and would prevent further fragmentation of the Activity. (Naval Air Engineering Center, Lakehurst, N.J., A/SLMR No. 1104)

A/S found claimed sector-wide unit of all unrepresented, nonprofessional employees of Airway Facility Sector to be appropriate. A/S also noted that the claimed unit also constitutes, in effect, a residual region-wide unit of all unrepresented nonprofessional employees of the Activity, and that such employees share a clear and identifiable community of interest and that the unit will promote effective dealings and efficiency of agency operations. (FAA, Oklahoma City Airway Facilities Sector, Wiley Post Airport, Bethany, Okla., A/SLMR No. 1132)

20 16 20 Self-Determiniation

No Entries

20 16 24 Supervisory Unit

A/S, noting particularly the history of representation of the employees at issue in a mixed unit by the incumbent Union and coverage of the employees under a succession of lawful agreements since the late 1940's, and the fact that historically the incumbent Union has represented similar employees in private industry, found that the incumbent's unit, containing both supervisory and non-supervisory employees, continued to be viable pursuant to Section 24 of the Order. (Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, Ariz., A/SLMR No. 1151)

20 16 28 Reorganization

A/S found that as a result of a reorganization which disestablished two of three formerly separate commands and merged them into the Activity, there was a material alteration in the scope and character of four of the six disputed units while no material change occurred in two others. (Naval Air Engineering Center, Lakehurst, N.J., A/SLMR No. 1104)

A/S found that, subsequent to a reorganization, a unit of Sign Shop employees remained appropriate for purpose of exclusive recognition, noting that in the 12 years since the functional craft unit was deemed appropriate for the purpose of exclusive recognition, including that time since 1972-73 reorganization, its overall function and structure underwent no appreciable change, that its employees continued to perform the same work under essentially the same supervision without any significant degree of interchange, transfer or comingling with other employees and that the Sign Shop had been in operation in its present location under the same conditions since the reorganization. (GSA, Region 3, A/SLMR No. 1105)

As result of reorganization and creation of new organizational entity, which combined several formerly independent agencies, two existing units -- a HQ-wide unit and a nation-wide unit -- were rendered inappropriate. Instead, A/S found a HQ-wide unit of all eligible employees of the new agency to be appropriate and so directed an election. (Dept. of Energy, A/SLMR No. 1136)

Following reorganization and creation of a new agency, A/S found one organizational element within the new agency to be a "successor" employer to the formerly independent agency and therefore obligated to accord recognition to nation-wide unit of employees exclusively recognized therein. (Dept. of Energy, A/SLMR No. 1136)

A/S dismissed aspect of petition at issue where insufficient evidence was found to support accretion sought by exclusive representative of Headquarters unit of the employees of two small organizational entities of Coast Guard located in Washington, D.C. where the disputed employees had not been affected by any reorganization and they did not participate in the election in which the Headquarters unit was certified. (U.S. Coast Guard Headquarters, A/SLMR No. 1164)

Petition seeking, in effect, the severance of the employees of the newly established DCASPRO, IBM Owego, from the DCASMA, Binghamton, unit, represented exclusively by the NAGE denied where reorganization did not result in any change in the day-to-day terms and conditions of employment of the employees involved, including their physical location, job function, and immediate supervision. In addition both DCASMA, Binghamton, and the DCASPRO, IBM Owego, continued to report to the same organizational command, they continued to be serviced by the same personnel office, they remained in the same areas of consideration for promotions and the same competitive area for reduction in force procedures, and they had an established history of collective bargaining. (DCASR, Boston, Mass., and DCASMA, Binghamton, N.Y., A/SLMR No. 1166)

20 16 32 Consolidation of Units

A/S found that proposed consolidated unit consisting of the 13 NAGE units within the AAFES was appropriate for the purposes of exclusive recognition under the Order. A/S noted particularly that the unit sought essentially included all nonprofessional employees at the various military exchanges involved and that personnel and labor relations policies were established and coordinated at AAFES Headquarters. He also noted that the parties had negotiated agreements covering 11 of the 13 units at the individual exchanges and that many of the subjects included in such agreements were dealt with uniformly. (Army and Air Force Exchange Service, Dallas, Tex., A/SLMR No. 1163)

Proposed petition for consolidation of 8 units represented by petitioner found appropriate where it was noted that the FLRC has construed the A/S's establishment of a presumption in favor of consolidation "- - - as a recognition and affirmation of the strong policy in the Federal labor-management relations program of facilitating consolidation - - -." (HEW, SSA, Region V-B, Chicago, Ill., A/SLMR No. 1082)

20 16 36 Successorship

Successorship was found where the unit in question was transferred substantially intact to the gaining employer; where the appropriateness of the unit remained unimpaired; and where no question concerning representation was raised. (Dept. of Energy, A/SLMR No. 1136)

20 20 00 Employee Categories and Classifications

Confidential Employees

Budget Analyst, GS-9, is not a confidential employee. (U.S. Army Reserve, 166th Support Group, Fort Buchanan, P.R., A/SLMR No. 1171)

Conflict of Interest

Attorney responsible for processing Privacy Act requests from parties other than exclusive representative is not a representative of management under Section 2(f) the EO, and is not excluded from the unit, because any conflict of interest with respect to the work of this employee was purely speculative in nature. (Customs Service, Office of Regulations and Rulings, A/SLMR No. 1148)

Conflict of Interest (Cont'd)

Attorneys included in unit found appropriate as there was no basis under the EO for their exclusion based upon an alleged conflict of interest nor evidence they acted as management officials. However, to the extent that certain attorneys could become involved in the implementation of the agency's labor-management relations program, the A/S found such attorneys should not be included in the unit. (Fed. Election Comm'n, A/SLMR No. 1076)

Auditors included in unit. (Fed. Election Comm'n, A/SLMR No. 1076)

Disclosure Analysts included in unit where A/S found no basis in the contention that there was a potential conflict of interest. (Fed. Election Comm'n, A/SLMR No. 1076)

Investigators included in unit. (Fed. Election Comm'n, A/SLMR No. 1076)

Research Analysts included in unit. (Fed. Election Comm'n, A/SLMR No. 1076)

Federal Personnel Work

Social Insurance Specialists (Field Operations)(Field Operations Staff Specialists -- FOSS), GS-105-12, are engaged in non-clerical Federal personnel work and, therefore, are excluded from the unit. (HEW, SSA, Region 5, A/SLMR No. 1097)

Management Officials
(See also: 05 04 00, "Definitions")

Attorney (Customs) responsible for processing Freedom of Information Act (FOIA) requests from exclusive representative is a representative of management, as such requests constitute "matters relating to the implementation of the agency labor-management relations program" as defined in Section 2(f) of the EO. (Customs Service, Office of Regulations and Rulings, A/SLMR No. 1148)

Management Officials (Cont'd)

Attorneys included in unit found appropriate as there was no basis under the EO for their exclusion based upon an alleged conflict of interest nor evidence they acted as management officials. However, to the extent that certain attorneys could become involved in the implementation of the agency's labor-management relations program, the A/S found such attorneys should not be included in the unit. (Fed. Election Comm'n, A/SLMR Mo. 1076)

Budget Analyst, GS-9, is not a management official. (U.S. Army Reserve, 166th Support Group, Fort Buchanan, P.R., A/SLMR No. 1171)

Public Information Officer, GS-9, is a management official. (U.S. Army Reserve, 166th Support Group, Fort Buchanan, P.R., A/SLMR No. 1171)

Staff Training Assistants, GS-9 and GS-11, are not management officials. (U.S. Army Reserve, 166th Support Group, Fort Buchanan, P.R., A/SLMR No. 1171)

Supervisors

Budget Analyst, GS-9, is not a supervisor. (U.S. Army Reserve 166th Support Group, Fort Buchanan, P.R., A/SLMR No. 1171)

Foreman II, is supervisor. (Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, Ariz., A/SLMR No. 1151)

Police Officials (Supervisory Hospital), GS-083-6, are supervisors. (VA Medical Center, Washington, D.C., A/SLMR No. 1160)

Social Insurance Program Specialists (Senior Data Operations Specialists), GS-105-13, are not supervisors. (HEW, SSA, Region 5, A/SLMR No. 1097)

Social Insurance Operations Specialists (Senior Disability Program Operations Specialists), GS-105-13, are supervisors. (HEW, SSA, Region 5, A/SLMR No. 1097)

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20 20 00 Employee Categories and Classifications (Cont'd)

Supervisors (Cont'd)

Social Insurance Program Specialists (Senior Operations Specialists), GS-105-13, are not supervisors. (HEW, SSA, Region 5, A/SLMR No. 1097)

Social Insurance Program Specialists (Senior Supplemental Security Income Program Operations Specialists), GS-105-13, are supervisors. (HEW, SSA, Region 5, A/SLMR No. 1097)

Staff Administrative Assistants, GS-9, are supervisors. (U.S. Army Reserve, 166th Support Group, Fort Buchanan, P.R., A/SLMR No. 1171)

Staff Training Assistants, GS-9, are not supervisors. (U.S. Army Reserve, 166th Support Group, Fort Buchanan, P.R., A/SLMR No. 1171)

Temporary Employees

Temporary employees included in unit as they have a reasonable expectancy of continued employment. (Fed. Election Comm'n, A/SLMR No. 1076)

20 24 00 Post-Decisional Intervention, Showing of Interest and Withdrawal

20 24 04 Posting of Notice of Unit Determination

No Entries

20 24 08 Showing of Interest

No Entries

20 24 12 Opportunity to Withdraw

As record contained no evidence to indicate whether either of two unions would be willing to represent unit of employees A/S ultimately found appropriate, A/S permitted either union to withdraw its name from the ballot. (Dept. of Energy, A/SLMR No. 1136)

25 00 00 REPRESENTATION ELECTION AND POST ELECTION STAGES

25 04 00 Voting Procedures

25 04 04 Professionals

As unit found appropriate included both professional and nonprofessional employees, the former were given a choice as to whether they desired to be represented in a separate professional unit or in a larger unit encompassing both categories of employees. (Dept. of Energy, A/SLMR No. 1136)

25 04 08 Self-Determination

No Entries

25 04 12 Role of Observers

No Entries

25 04 16 Severance

No question concerning representation exists with respect to that portion of the existing mixed unit consisting of supervisors who will continue to be represented exclusively by the incumbent Union regardless of the outcome of the election. In the event that a majority of those voting in the election choose the incumbent Union as their representative the existing mixed unit and the representation thereof will continue. Conversely, if a majority of the voting nonsupervisory employees choose the petitioner as their exclusive representative, such employees will be severed from the existing mixed unit and the petitioner will be certified as their exclusive representative. Those nonsupervisory employees eligible shall vote whether they desire to be represented for the purpose of exclusive recognition by the petitioner, the incumbent Union, or neither. (Interior, Bureau of Reclamation, Yuma Projects Office, Yuma, Ariz., A/SLMR No. 1151)

25 08 00 Objections

25 08 04 Under EO 10988

No Entries

25 08 08 Procedure

No Entries

25 08 12 Timing and Ojectionable Conduct

No Entries

25 08 16 Agency Rules and Campaigning

No Entries

25 08 20 Campaign Communications

No Entries

25 08 24 Promises of Benefit

No Entries

25 08 28 Conduct of Election

No Entries

25 08 32 Agency Neutrality

No Entries

25 12 00 Challenges

25 12 04 Eligibility of Employees
(See also: 20 20 00, "Employee Categories and Classifications")

This case involved one challenged ballot which was sufficient to affect the results of a run-off election in a non-pro unit of the Activity's employees. Contrary to the ALJ, the A/S concluded that the employee at issue, a Community Health Educator, was a professional employee within the meaning of the Order. He noted, among other things, that the subject employee presents lectures on health care matters to Navajo and Hopi Indians, provides instruction and answers questions, receives no daily supervision, and, does so because of her specialized education and unique cultural background. In the performance of her work, she consistently exercises discretion and independent judgement. The A/S ordered that the challenged ballot not be opened and counted and that the appropriate RA cause a certification to be issued. (HEW, Public Health Service, Tuba City, Ariz., A/SLMR No. 1146)

25 12 08 Questions Concerning Ballot

No Entries

25 12 12 Timing of Challenge

No Entries

25 16 00 Certification

No Entries

25 20 00 Clarification of Unit
(See also: 10 04 16, "Types of Petitions: Procedures, CU")

A/S ordered that the existing unit be clarified based on his determination that a senior Attorney (Customs) responsible for processing Freedom of Information Act (FOIA) requests from exclusive representative is a "representative of management" under Section 2(f) and that another senior Attorney (Customs) responsible for processing Privacy Act requests from parties other than exclusive representative is not a representative of management. (U.S. Customs Service, Office of Regulations and Rulings, A/SLMR No. 1148)

Unit clarified to reflect that employees of the Nat'l Archives Trust Fund Board have been and remain within the exclusively recognized unit of all professional and nonprofessional employees of the Nat'l Archives and Records Service, Washington, D.C., Metropolitan Area. (GSA, Nat'l Archives and Records Service, A/SLMR No. 1075)

25 24 00 Amendment of Recognition of Certification

No Entries

30 00 00 UNFAIR LABOR PRACTICES: PROCEDURE

30 04 00 Requisites for Charges and Complaints

A/S found it unnecessary to pass upon ALJ's apparent finding that Respondent's conduct also constituted an independent Section 19(a) (1) violation since the complaint contained no independent Section 19(a)(1) allegation. (SSA, Bureau of Data Processing, Albuquerque Data Operations Center, Albuquerque, N.M., A/SLMR No. 1080)

A/S found that dismissal of the complaint on procedural grounds was unwarranted where the IRS Nat'l Off. did not claim surprise or prejudice as a result of its not being named in the precomplaint charge or in the allegation contained therein or that at any stage of the proceeding it was not fully aware of the allegations against it. (IRS, Milwaukee Dist., A/SLMR No. 1133)

A/S adopted the ALJ's conclusion that the Region was properly made a party, in that it was served with a copy of the original complaint which cited its involvement in the alleged violations, and it did not object to its inclusion as a party in the matter pursuant to the amended complaint, although the Respondent Agency subsequently objected to the inclusion of the Region in the proceeding where the Notice of Hearing included the Region as a party and no objection was made during the two-month period between the issuance of the Notice of Hearing and the holding of the hearing; and where, there was no contention that the Region was prejudiced in this matter by surprise or was otherwise impeded in its preparation of an adequate defense. (Customs Service and Houston Region, A/SLMR No. 1135)

30 08 00 Complaint Proceedings: Investigation Stage

30 08 04 Blocking Complaints

No Entries

30 12 00 Hearing

30 12 04 Rulings of ALJs

A/S noted that evidence of conduct subsequent to the alleged refusal to bargain should have been admitted into the record as such evidence could be utilized to demonstrate that the alleged refusal had been cured Under the circumstances of this case, however, the Respondent was not found to have been prejudiced by the ALJ's ruling. (EEOC , A/SLMR No. 1096)

30 12 04 Rulings of ALJs (Cont'd)

A/S specifically did not adopt ALJ's finding of Section 19 (a)(1) violation, where the same allegation had been rejected by the RA as a Section 19(a)(2) allegation and upheld by the A/S on appeal, and, therefore, was not before the ALJ. (U.S. Dept. of the Army, Fort Polk, La., A/SLMR No. 1100)

A/S found the ALJ's admission of documents submitted post-hearing, which involved the parties unsuccessful attempts to reach a settlement, as improper, noting that it had been held previously that it would not foster and afford an atmosphere conducive to settlement of ULPs if matters connected with settlement deliberations were admitted as evidence. ALJ's admission was not considered prejudicial as such documents were not considered. (GSA, Nat'l Archives and Records Service, A/SLMR No. 1113)

A/S noted that the test whether Section 19(a)(2) was violated is whether management has discriminatorily affected employee terms and conditions of employment based on union considerations. Further, such a violation will be found in "mixed motive" situations; i.e. where a legitimate basis for the management action exists, but where union considerations also are shown to have played a part. Accordingly, A/S remanded case to ALJ for the purpose of making the necessary credibility resolution and preparing and submitting to A/S a Supplemental Recommended Decision and Order. (HEW, SSA, Bureau of Hearings and Appeals, Region 2, San Juan, P.R., A/SLMR No. 1127)

A/S agreed with ALJ's refusal to allow testimony regarding settlement discussions between the parties, as admission into evidence of such testimony would be inconsistent with the purposes and policies of the EO encouraging settlement of ULP's, citing prior case law on this issue. (NLRB and its General Counsel and NLRB, Region 29, A/SLMR No. 1143)

30 12 08 Untimely Amendments to Complaints

No Entries

30 12 12 Failure to Appear

No Entries

30 12 16 Prejudicial Evidence

ALJ's gratuitous disparaging remarks to Respondent's witness held not to be prejudicial to Respondent by A/S. However, A/S noted such remarks were uncalled for and inappropriate. (Dept. of the Army, Fort Polk, La., A/SLMR No. 1100)

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30 12 20 Technical Deficiencies

No Entries

30 12 24 Evidence and Burden of Proof

Although the IAM alleged that certain NARF announcements constituted unilateral changes in past practices or existing conditions of employment, the ALJ made no specific findings with respect to whether the announcements constituted changes from existing practices. A/S, however, determined that the evidence was inconclusive and that the IAM had not sustained its burden of proving such unilateral changes. (Dept. of Navy, NARF, Alameda, Calif., A/SLMR No. 1089)

A/S issued a Decision and Remand in A/SLMR No. 1127 remanding case to ALJ for the purpose of making an appropriate finding of fact determined to be necessary in reaching a resolution of the Section 19(a)(2) complaint. In view of the ALJ's finding of fact in his Supplemental Recommended Decision and Order, the A/S concluded that the evidence was insufficient to establish that Respondent's conduct was based, in whole or in part, on the union activity of the alleged discriminatee. (SSA, Bureau of Hearings and Appeals, Region II, San Juan, P.R., A/SLMR No. 1154)

A/S adopted the ALJ's recommendation that the case be dismissed in its entirety, as the Complainant, which called no witnesses and presented only the parties' negotiated agreement into evidence, had not sustained its burden of proof. (VA Hospital, Butler, Pa., A/SLMR No. 1167)

30 12 28 Lack of Cooperation

No Entries

30 16 00 Post-Hearing

A/S found the ALJ's admission of documents submitted post-hearing, which involved the parties unsuccessful attempts to reach a settlement, as improper, noting that it had held previously that it would not foster and afford an atmosphere conducive to settlement of ULPs if matters connected with settlement deliberations were admitted as evidence. ALJ's admission was not considered prejudicial as such documents were not considered. (GSA, Nat'l Archives and Records Service, A/SLMR No. 1113)

A/S noted that the test whether Section 19(a)(2) of the EO was violated is whether management has discriminatorily affected employee terms and conditions of employment based on union considerations. Further, such a violation will be found in "mixed motive" situations; i.e. where a legitimate basis for the management action exists, but where union considerations also are shown to have played a part. Accordingly, A/S remanded case to ALJ for the purpose of making the necessary credibility resolution and preparing and submitting to A/S a Supplemental Recommended Decision and Order. (HEW, SSA, Bureau of Hearings and Appeals, Region 2, San Juan, P.R., A/SLMR No. 1127)

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30 20 00 Stipulated Record

Pursuant to Sections 203.5(b), 203.7(a)(4) and 205.5(e) of the A/S Regs, RA transferred case to the A/S for decision based on a stipulated record in an ULP proceeding. (IRS and Brookhaven Service Center, A/SLMR No. 1092)

30 20 00 Stipulated Record

Pursuant to Section 206.5(a) of the A/S Regs., as the RA transferred case to A/S for decision based on a stipulated record. Prior to this transfer, the RA issued a notice of hearing which inadvertently indicated that, in addition to an alleged violation of Section 19(a)(1) an alleged violation of Section 19 (a)(6) was still outstanding and at issue in this case. However, the Section 19(a)(6) allegation in the amended complaint was based on facts unrelated to those stipulated by the parties and was dismissed by RA at an earlier stage in proceedings. A/S accordingly corrected RA's advertence. (HEW, Office of the Secretary, Office for Civil Rights, A/SLMR No. 1145)

Pursuant to Sections 203.5(b), 203.7(a)(4), and 206.5(b) of the A/S Regs, RA transferred case to the A/S for decision on the stipulations, exhibits and briefs. (NASA, Lewis Research Center, Cleveland, Ohio, A/SLMR No. 1179)

30 24 00 Employee Status: Effect on Unfair Labor Practices

A/S, noting particularly the absence of exceptions, adopted the conclusion of the ALJ, that the Respondent did not violate Section 19(a)(1) and (6) of the E O where the management official involved did not possess the authority to bind the Respondent. (FAA, N.Y. Air Route Traffic Control Center, A/SLMR No. 1178)

30 28 00 Effect of Other Proceedings or Forums

No Entries

30 32 00 Major Policy Issue Raised

No Entries

35 00 00 UNFAIR LABOR PRACTICES: AGENCY

35 04 00 General

35 04 04 Guidance or Directives of Civil Service Commission or Agency

No Entries

35 04 08 Waiver of Rights Granted by Executive Order

Negotiated agreement did not constitute a clear and unmistakable waiver of exclusive representative's right under the EO to select its own representatives when dealing with agency management. (FAA, A/SLMR No. 1073)

A/S found that the evidence was insufficient to establish that Complainant had waived the right to negotiate with respect to impact and implementation of the change of postition and/or classification as it affected employees at the GS-6 level and below. (IRS, Kansas City, Ogden, Chamblee, Philadelphia, Austin, Covington, Fresno and Brookhaven Service Centers, Detroit Data Center and Martinsburg Nat'l Computer Center, A/SLMR No. 1074)

A/S adopted ALJ finding that, in view of the language of the parties' negotiated agreement and the history of bargaining between the parties, Complainant knowingly and intentionally waived its right to designate, as its Section 10(e) representative, individuals other than those specifically enumerated in the negotiated grievance procedure. (IRS, Nat'l Off., Off. of Int'l Operations, A/SLMR No. 1079)

ALJ concluded that the parties' negotiated agreement did not constitute a clear and unmistakable waiver by the Complaint of its right to negotiate pursuant to Section 11 (a) of the EO. (EEOC, A/SLMR No. 1096)

Complainant did not clearly and unmistakably waive its right to bargain on the impact and implementation of Respondent's decision to convert temporary positions into permanent ones. (IRS, Austin Service Center, Austin, Tex., A/SLMR No. 1142)

35 04 12 Management Rights

No Entries

35 04 16 National Consultation Rights

No Entries

35 08 00 Section 19 (a)(1)

No Entries

35 08 04 Interference

No violation found where Respondent refused to consult, confer or negotiate with certain of the Complaint's facility representatives where Section 19(d) of the EO precluded further processing of the complaint. (FAA, A/SLMR No. 1073)

Noting that the Section 19(a)(1) allegation was derivative in nature, rather than an independent violation, the A/S found no evidence that the conduct and statements of two supervisors, one of whose supervisory status was in dispute, interfered with the rights of unit employees, including one probationary/trial employee who was eventually terminated. (TANG, Kelly AFB, A/SLMR No. 1078)

A/S found, in agreement with the ALJ, that the Respondent violated Section 19(a)(1) and (2) of the EO by its removal of two employees from the list of those eligible to serve as Acting Group Manager as their removal was taken as a reprisal for discontinuing their savings bond allotments, an activity sponsored by the Complainant, undertaken to support Complainant's attempt to secure a favorable agreement with the Respondent and thus protected by Section 1(a) of the EO. (IRS, and IRS S.S. Dist. Off. A/SLMR No. 1081)

A/S adopted ALJ's conclusion that Respondent's conduct was violative of Section 19(a)(1) and (6) of EO. ALJ found remarks of the facility commander concerning the cancellation of 4 job announcements because of Complainant's bargaining position interferred with employees' rights to be represented. He found also, and A/S agreed, that publication of the results of negotiations in such a manner as to indicate that the outcome of such negotiations were inimical to employee interests, or that employees would receive more favorable treatment if their exclusive representative refrained from dealing with the Respondent, was improper. (Pennsylvania Army and Air NG, A/SLMR No. 1085)

A/S did not adopt ALJ's finding of independent Section 19 (a)(1) violations as the record did not support any allegations of an independent Section 19(a)(1) violation. (Dept. of Navy, NARF, Alameda, Calif., A/SLMR No. 1089)

While determining that the Council's decision in FLRC Nos. 77A-40 and 77A-92 did not warrant a result contrary to that reached in A/SLMR No. 998, A/S modified his holding in that case consistent with the Council's rationale, thus finding that Respondent violated Section 19(a)(1) and (6) by unilaterally terminating certain provisions of an expired negotiated agreement which were mandatory subjects of bargaining under Section 11(a) of the EO, without giving Complainants an opportunity to invoke the services of the Federal Service Impasses Panel. (IRS, A/SLMR No. 1091)

A/S found that the Respondent's conduct in denying four employees representation by the Complainants under the IRS' grievance procedure was not violative of Section 19 (a)(1) of the EO. He noted that the Respondent's conduct was based on provisions contained in the regulations of an appropriate authority outside the IRS, the CSC, whose regulations regulate agency grievance systems and that absent evidence of anti-union motivation, the enforcement of the rules governing the IRS' grievance procedure, which procedure is the creation of the IRS pursuant to the requirements of the CSC, is the responsibility of the IRS and the CSC. A/S found where the CSC has specifically regulated agency prievance procedures by providing that an agency head may deny employees a particular representative on the grounds of conflict of interest or conflict of position, the ULP procedures of the EO cannot be utilized to police the agency's application of the CSC's regulations. (IRS and Brookhaven Service Center, A/SLMR No. 1092)

A/S found, in agreement, with the ALJ, that statements made by the Respondent's supervisor to several employees in the unit were imbued with hostility, disdain and disparagement to the Union, and that said statements demeaned the Union and tended to convey to employees the futility of union representation and discouraged employees from exercising rights granted under Section 1(a) of the EO and that such conduct was violative of Section 19(a)(1) of the EO. (GSA, Region 3, A/SLMR No. 1094)

A/S, noting particularly the absence of exceptions, adopted ALJ's findings that Respondent did not violate Section 19(a) (1) of the EO, inasmuch as, Respondent's Labor-Management Relations Officer did not threaten as alleged, to have Complainant's President and Vice President transferred to another school as a solution to labor-management problems at the Flandreau Indian School. (Bureau of Indian Affairs, Flandreau Indian School, Flandreau, S.D., A/SLMR No. 1098)

A/S in adopting the ALJ's finding, to which no exceptions were filed, that the Respondent's Audit Dept. Group Manager did not make the alleged statements, concerning the "jurisdiction" of the Complainant with respect to the Respondent, attributed to him by the Complainant, found it unnecessary to pass upon his further conclusion as to whether the statements would have been violative of the EO if they had, in fact, been made, and dismissed the complaint which had alleged violation of Section 19(a)(1) of the EO. (IRS Austin Dist., Austin, Tex., A/SLMR No. 1099)

A/S adopted ALJ's finding that the Respondent violated the EO when its representative threatened a unit employee with being found unqualified for her position if "she stirred things up or dirtied up the water" by filing a grievance and/or going to the union over the promotion she sought. (Dept. of the Army, Fort Polk, La., A/SLMR No. 1100)

A/S adopted ALJ's finding that Respondent had not violated Section 19(a)(1) and (2) of the EO by discharging an employee because it believed she had engaged in improper conduct in connection with her work performance and not because of her union activities. The record failed to establish any union animus or that the employee was treated any differently than employees who had not been active on behalf of the Union. (Army and Air Force Exchange Service, A/SLMR No. 1110)

A/S found, in agreement with ALJ that the issuance of a letter to Complainant's representatives advising them of their violation of security procedures and of the possibility of future discipline was justified, and, therefore, not violative of the EO, where the representatives were engaged in unprotected activity and there was no evidence of anti-union considerations. (GSA, Nat'l Archives and Records Service, A/SLMR No. 1113)

Alleged violations of Section 19(a)(1) of the EO based on failure to negotiate prior to changing official time policy and charging local president with annual leave for use of time beyound specified limitation were dismissed where A/S found the matter involved differing and arguable interpretations of official time provision of the parties' negotiated agreement rather than clear, unilateral breach thereof. (Naval Weapons Station, Concord, Calif., A/SLMR No. 1115)

A/S adopted ALJ's finding that Respondent's interrogation of two union officers concerning their union activities, did not constitute coercive interrogation of the employees involved, and therefore, did not violate Section 19(a)(1) of the EO. (Customs Service, Region 4, Miami, Fla., A/SLMR No. 1118)

A/S adopted ALJ's finding that remarks made by Respondent's Commissary Manager to union steward did not violate Section 19(a)(1) of the EO. ALJ concluded that the remarks dealt only with the Commissary Manager's demand that the steward strictly adhere to the requirements of the parties' negotiated agreement in the course of her representational duties. In connection with the allegation that the Manager told the steward that she could not conduct union business during her breaktime, the ALJ, on the basis of credited testimony, concluded that the statement had not been made. (USAF Commissary Command, Base Commissary, Barksdale AFB, La., A/SLMR No. 1123)

A/S adopted ALJ's finding that Respondent did not violate Section 19(a)(1) of the EO by deferring the processing of a grievance beyond step 2 of the negotiated procedure pending completion of a related EEO proceeding, as such action was based upon a legitimate belief that regulation and the EO precluded the simultaneous operation of the two procedures. A/S noted particularly that the Respondent at all times had indicated its willingness to proceed with the grievance once the EEO matter had been resolved. (HEW, SSA, Disability Insurance Program Staff, Chicago, Ill., A/SLMR No. 1128)

Statements made by the Respondent to the Complainant's President following her disclosure of confidential patient information, were violations of Section 19(a)(1) of the EO as the statements tended to restrict the Complainant's legitimate concern with a matter affecting the working conditions of unit employees. (VA, Wash., D.C., A/SLMR No. 1131)

A/S adopted ALJ's finding that supervisor's interrogation of a union officer about his reasons for signing a letter to management was violative of the EO noting that the interrogation could reasonably be construed by the employee to reflect an intention by the Respondent to discourage him from engaging in protected activity. (NLRB and its General Counsel and NLRB, Region 29, A/SLMR No. 1143)

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35 08 04 Interference (Cont'd)

A/S found that Respondent's written apology to the union representative and unit employees, delivered some three weeks after the violations, did not work to mitigate the Respondent's failure to meet its obligation under Section 10(e) of the EO particularly where, as here, Respondent did not concede that its conduct was violative of the EO. (HEW, Office of the Secretary, Office for Civil Rights, A/SLMR No. 1145)

A/S, under the practicular circumstances, found that Respondent's conduct in failing to provide the union representative with an opportunity to participate in a meeting concerning personnel policies and practices and other matters affecting the general working conditions of unit employees, was a violation of Section 19(a)(1) of the EO. (HEW, Office of the Secretary, Office for Civil Rights, A/SLMR No. 1145)

A/S adopted ALJ's conclusion that the Respondent had violated Section 19(a)(1) of the EO when it prohibited an employee from acting simultaneously as a part-time EEO counselor and as a union officer, as he found no conflict of interest under Section 1(b) of the EO because the employee's duties as union officer involved only internal management of the union and did not require her to be an adversary of management and an advocate for employees. Consequently, he concluded that the Respondent's conduct interfered with her Section 1(a) right to participate in the management of a labor organization. (GSA, Nat'l Personnel Records Center, A/SLMR No. 1174)

35 08 08 Distribution of Literature

Respondent did not violate Section 19(a)(1) of the EO when it failed to remove literature posted by a labor organization with whom it had a contractual agreement where such literature was of a rival labor organization which was not in an equivalent status with the Complainant. (FAA, Alaskan Region, A/SLMR No. 1141)

35 08 12 Solicitation

No Entries

A/S found no evidence that probationary/trial employee's termination was discriminatory in nature. (TANG, Kelly AFB, A/SLMR No. 1078)

A/S found, in agreement with the ALJ, that the Respondent violated Section 19(a)(1) and (6) of the EO by its removal of two employees from the list of those eligible to serve as Acting Group Manager as their removal was taken as a reprisal for discontinuing their savings bond allotments, an activity sponsored by the Complainant, undertaken to support Complainant's attempt to secure a favorable agreement with the Respondent and thus protected by Section 1(a) of the EO. (IRS, IRS, S.C. Dist. Off., A/SLMR No. 1081)

A/S adopted ALJ's finding that Activity did not violate Section 19(a)(1) and (2) when it dismissed the Complianant from his employment as a temporary employee, where there was no evidence of animus, there was no discrimination against the Complainant, as his termination occurred because his request for recurring leave was inconsistent with the requirements of the job for which he had been hired. However. A/S did not adopt that portion of ALJ Decision which implied there could be no finding of a 19(a) (2) violation in the above absent disparate treatment. (VA Hospital, Minneapolis, Minn., A/SLMR No. 1090)

A/S affirmed a Section 19(a)(1) and (2) violation found by the ALJ where a supervisor told the Complainant's VP that, if he had any influence, he would not promote the VP due to the fact that his union activities took too much time from work. (Ogden Air Logistics Center, Hill AFB, Utah, A/SLMR No. 1095)

A/S specifically did not adopt ALJ's finding of a violation of Section 19(a)(1) of the EO, where the same allegation had been rejected as a Section 19 (a)(2) allegation by the RA and upheld on appeal to the A/S, and, therefore, was not before the ALJ. (Dept. of the Army, Fort, Polk, La., A/SLMR No. 1100)

A/S adopted ALJ's finding that Respondent had not violated Section 19(a)(1) and (2) of the EO by discharging an employee because it believed she had engaged in improper conduct in connection with her work performance and not because of her union activities. The record failed to establish any union animus or that the employee was treated any differently than employees who had not been active on behalf of the Union. (Army and Air Force Exchange Service, A/SLMR No. 1110)

A/S adopted ALJ's finding that Complainant failed to prove by a preponderance of evidence that Respondent violated Section 19(a)(1),(2) or (4) of the EO by imposing extraordinary reporting requirements and close scrutinization upon the Complainant or that an official disciplinary penalty of a hearing had been imposed on the Complainant in retaliation for the Complainant having engaged in protected activity. (EEOC, Boston Dist. Off., A/SLMR No. 1111)

A/S found, in agreement with ALJ, that the issuance of a letter to Complainant's representatives advising them of their violation of security procedures and of the possibility of future discipline was justified, and, therefore, not violative of the EO, where the representatives were engaged in unprotected activity and there was no evidence of anti-union considerations. (GSA, Nat'l Archives and Records Service, A/SLMR No. 1113)

Alleged violation of Section 19(a)(2) of the EO when local president was charged annual leave for use of official time in excess of a specified limitation were dismissed where A/S found the matter involved differing and arguable interpretations of the official time provision of the parties' negotiated agreement rather than clear, unilateral breach thereof. (Naval Weapons Station, Concord, Calif., A/SLMR No. 1115)

A/S, in agreement with ALJ, found that Customs Inspector's transfer was discriminatorily motivated and violative of Section 19(a)(1) and (2) of EO. (Customs Service, Region 4, Miami, Fla., A/SLMR No. 1118)

A/S, contrary to the ALJ, noted that the test as to whether Section 19(a)(2) was violated is whether management has discriminatorily affected employee terms and conditions of employment based on union considerations. Further, such a violation will be found in "mixed motive" situations; i.e. where a legitimate basis for the management action exists, but where union considerations also are shown to have played a part. Accordingly, A/S remanded case to ALJ for the purpose of making the necessary credibility resolution and preparing and submitting to A/S a Supplemental Recommended Decision and Order. (HEW, SSA, Bureau of Hearings and Appeals, Region 2, San Juan, P.R., A/SLMR No. 1127)

A/S dismissed Section 19(a)(2) allegation contrary to ALJ, on basis that it was beyond the scope of the complaint ans was not properly before the A/S. (VA, Wash., D.C., A/SLMR No. 1131)

A/S found in agreement with the ALJ that the Respondent did not violate Section 19(a)(1) and (2) of the EO, where although the record indicated that employee was active in the union, it failed to establish that he was not selected for promotion to a new job based on his union activities. (VA Center, San Juan, P.R., A/SLMR No. 1137)

A/S issued a Decision and Remand in A/SLMR No. 1127 remanding case to ALJ for the purpose of making an appropriate finding of fact determined to be necessary in reaching a resolution of the Section 19 (a)(2) allegation of the complaint. In view of the ALJ's finding of fact in his Supplemental Recommended Decision and Order, the A/S concluded that the evidence was insufficient to establish that Respondent's conduct was based, in whole or in part, on the union activity of the alleged discriminatee. (SSA, Bureau of Hearings and Appeals, Region II, San Juan, P.R., A/SLMR No. 1154)

A/S found in agreement with ALJ that there was insufficient evidence to establish that the termination of a probationary employee was based on, or motivated, at least in part, by the employees' exercise of his protected union rights in violation of Section 19(a)(2) of the EO. (HEW, Region IX, San Francisco, Calif., A/SLMR No. 1156)

35 12 00 Section 19(a)(2) (Cont'd)

A/S adopted ALJ's recommendation that the complaint be dismissed, noting that the evidence failed to establish that Respondent's conduct of extending a unit employee's 90-day warning notice was discriminatorily motivated. (U.S. Customs Serivce, Region IV, Miami, Fla., A/SLMR No. 1157)

A/S found in agreement with the ALJ that there was not a scintilla of evidence on the record to establish that the Respondent, though its supervisory employee, the Officer in Charge of the Cincinnati Office, engaged in activity in violation of Section 19(a)(1) and (2) of the Order by various acts described as a systematic scheme designed to harass, isolate and discredit. Complainant because of his union activities. (Dept. of Justice, Immigration and Naturalization Service, Cleveland, Ohio, A/SLMR No. 1169)

Although Respondent violated Section 19(a)(1) of EO by prohibiting an employee from acting simultaneously as a part-time EEO counselor and as a union officer, no Section 19(a)(2) violation found where the individual's conditions of employment were unaffected by the Respondent's conduct. (GSA, National Personnel Records Center, A/SLMR No. 1174)

35 16 00 Section 19(a)(3)

A/S, in agreement with the ALJ, found that there was insufficient evidence to establish that one of the respondent's fire captains who was the president of the exclusive representative, was a supervisor as alleged in the complaint and held that the Respondent had not violated Section 19(a)(1) and (3) of the EO by allowing the employee to remain as president. (Naval Training Center, San Diego, Calif., A/SLMR No. 1121)

Section 19(a)(1) and (3) allegation based on an employee's collection of signatures on a petition requesting removal of a union steward dismissed where it was found that the employee involved was not a supervisor within the meaning of Section 2 (c) of the EO. (Dept. of AF, McClellan AFB, A/SLMR No. 1122)

Respondent did not violate Section 19(a)(3) of the EO when it failed to remove literature posted by a labor organization with whom it had a contractual agreement where such literature was of a rival labor organization which was not in an equivalent status with the Complainant. (FAA, Alaskan Region, A/SLMR No. 1141)

35 16 00 Section 19(a)(3) (Cont'd)

In agreement with ALJ, A/S found that Respondent's conduct in granting leave without pay to a shop foreman, in order that he might serve as an AFGE National Vice-President, was not violative of Section 19(a) (1) and (3) of EO. (AF, 57th Field Maintenance Squadron, Nellis AFB, Nev., A/SLMR No. 1162)

35 20 00 Section 19(a)(4)

A/S found no evidence that probationary/trial employee was terminated in reprisal for having filed a grievance. (TANG, Kelly AFB, A/SLMR No. 1078)

A/S adopted ALJ's finding that Complainant failed to prove by a preponderance of evidence that Respondent violated Section 19(a)(1), (2) or (4) of the EO by imposing extraordinary reporting requirements and close scrutinization upon the Complainant or that an official disciplinary penalty of a hearing had been imposed on the Complainant in retaliation for the Complainant having engaged in protected activity. (EEOC, Boston, Dist. Off., A/SLMR No. 1111)

35 24 00 Section 19(a)(5)

No Entries

35 28 00 Section 19 (a)(6)

35 28 04 Response to Bargaining Request

A/S found that the Respondent did not violate the Order where the evidence established that the Region, in so far as it refused to release all the necessary and relevant material sought by the Complaint was acting in accordance with the directions of the Respondent Agency, citing Naval Air Rework Facility, Pensacola, Florida, FLRC No. 76A-37 (1977). (Customs Service and Houston Region, A/SLMR No. 1135)

35 28 04 Response to Bargaining Request (Cont'd)

A/S adopted ALJ's finding that Respondent violated Section 19(a)(1) and (6) of the Order by refusing to permit a representative of the Complainant's choice to attend a meeting concerning a formal discussion between management and employees concerning personnel policies and practices within the meaning of Section 10(e) of the Order. A/S further found that the Respondent had failed to comply with its obligation to negotiate and bargain in good faith with the Complainant concerning the procedures that were utilized in effectuating its decision to transfer cases from one office component to another and about the impact of the decision on adversely affected employees. (SSA, BRSI, Northeastern Program Service Center, A/SLMR No. 1150)

A/S adopted ALJ's dismissal of Section 19(a)(1) and (6) allegation that Respondent refused to negotiate regarding the clarification and implementation of a provision of the parties' negotiated agreement dealing with the posting of job vacancy announcements. ALJ found no agreement to negotiate regarding the job announcements provisions, as there was nothing in the negotiated agreement or elsewhere to suggest that further clarification or revision of the provision was contemplated by the parties. (Pennsylvania Army and Air NG, A/SLMR No. 1155)

35 28 08 Failure to Meet and Confer Generally

A/S adopted ALJ's conclusion that Respondent's attempt to limit the discussion at a meeting with the Complainant concerning four drafts of personnel policy directions which the Respondent had submitted to the Complainant, to "consultation" rather than negotiation, constituted a refusal to bargain in violation of Section 19(a)(1) and (6) of the EO. In so doing, the ALJ concluded that the parties' negotiated agreement did not constitute a clear and unmistakable waiver by the Complainant of its right to negotiate pursuant to Section 11(a) of the EO. (EEOC, A/SLMR No. 1096)

Respondent did not violate Section 19(a)(1) and (6) of the EO by its refusal to negotiate on the supervisory monitoring of Appeals Officers' conferences, as such action constituted the continuation of an established practice. (North-Atlantic Region, IRS, A/SLMR No. 1129)

A/S in agreement with ALJ found that the Respondent's unilateral act of refusing to process a grievance at step 3 of the parties' negotiated grievance procedure not only contravened the terms of the negotiated agreement but also precluded the Complainant from proceeding to additional steps in the grievance procedure, including arbitration in violation of Section 19(a)(1) and (6) of the EO. (GSA, Region 5, Chicago, Ill., A/SLMR No. 1139)

A/S adopted ALJ's finding that the Respondent did not violate Section 19(a)(1) and (6) of the EO by transferring in mass, officers from a tactical unit on a non-seniority basis, in disregard of the parties oral agreement. In reaching his decision, he found that the parties' oral agreement to use seniority as a basis for transferring the officers from one unit to another did not apply to the tactical unit and that the transfers to and from this special unit were to be based on performance. (GSA, Region 3, Federal Protective Service Division, A/SLMR No. 1140)

Respondent did not violate Section 19(a)(1) and (6) of the Order as the Respondent's refusal to approve supplemental local agreement without certain modifications did not reflect improper refusal to bargain, only a reasonable disagreement with respect to interpretation of a controlling agreement. Further Complainant did not utilize procedures available for resolving issues involved. (NLRB, A/SLMR No. 1149)

A/S adopted the ALJ's findings that Respondent had violated Section 19(a)(1) and (6) of the EO when it changed the workday, workweek and frequency of shift rotation without first bargaining in good faith on these Section 11(a) matters. A/S also found that while the decision to adopt a team concept was a reserved management right within the meaning of Section 11(b) of the EO, Respondent violated 19(a)(1) and (6) by implementing the new procedure without first affording the exclusive representative an opportunity to bargain over impact and implementation. (U.S. Customs Service, Region VI, Houston, Tex., A/SLMR No. 1161)

35 28 08 Failure to Meet and Confer Generally (Cont'd)

A/S found that Respondent violated Section 19(a)(1) and (6) of the EO when it unilaterally changed an existing policy and past practice whereby policemen in the unit received advance notice of their assignments. Contrary to the ALJ the A/S found that the Respondent's conduct was more than a de minimus or technical violation of the Order, distinguishing Vandenberg Air Force Base, 4392nd Aerospace Support Group, Vandenberg Air Force Base, California, FLRC No. 74A-77 (1975). (Naval Administrative Command, Naval Training Center, Great Lakes, Ill., A/SLMR No. 1175)

No violation found where Respondent refused to consult, confer or negotiate with certain of the Complainant's facility representatives where Section 19(d) of the EO precluded further processing of the complaint. (FAA, A/SLMR No. 1073)

35 28 12 Failure to Meet and Confer on Impact or Procedures

A/S found that the Respondent's refusal to negotiate as to the procedures used in implementing the new standard Position Descriptions and Classification Guidlines as they affected employees classified as GS-592 series Tax Examiners and Tax Assistants, GS-6 and below, and on the impact of such Guidelines on adversely affected employees constituted a violation of Section 19(a)(1) and (6) of the EO. (IRS, Kansas City, Ogden, Chamblee, Philadelphia, Austin, Covington, Fresno and Brookhaven Service Centers, Detroit Data Center and Martinsburg Nat'l Computer Center, A/SLMR No. 1074)

A/S adopted ALJ's finding, in a consolidated proceeding, that the Activity did not violate Section 19(a)(1) and (6) of the EO, when it established a change in tour of duty in the Activity's operating room late shift since the matter was integrally related to and consequently determinative of the staffing pattern and thus a management right under Section 11(b) of EO and further the Complainant had been afforded an opportunity, but failed to avail itself of the opportunity to request impact bargaining. A/S further adopted ALJ's finding that the Activity did not violate Section 19(a)(1) and (6) of the EO when it continued the new tour despite an oral promise to the contrary made by a supervisor whom the A/S found lacked authority to bind the Activity. (VA Hosp., Lincoln, Neb., A/SLMR No. 1083)

A/S affirmed ALJ's finding that Respondent did not violate Section 19(a)(1) and (6) of the EO where Respondent notified the Complainant and sought its comments on the proposed new policy prior to its implementation and where complainant failed to request bargaining on the new policy or the impact it would have on unit employees. (Ogden Air Logistics Center, Hill AFB, Utah, A/SLMR No. 1084)

A/S, in agreement with ALJ, found the Respondent had not violated Section 19(a)(1) and (6) of the EO by refusing to negotiate with Complainant over the implementation and impact of a RIF since the parties negotiated agreement limited Respondent's obligation to notify Complainant concerning RIFs and that the subject RIF met the limitations set forth in the negotiated agreement. (Dept. of the Air Force, Davis-Monthan AFB, Tucson, Ariz., A/SLMR No. 1088)

A/S, in agreement with the ALJ, found that the Respondent violated Section 19(a)(1) and (6) of the EO by its failure to timely notify the AFGE and afford it a reasonable opportunity to meet and confer concerning the impact and implementation of the Respondent's decision to detail certain of its employees. (DHEW, SSA, BRSI, NE Program Service Center, A/SLMR No. 1101)

A/S did not adopt ALJ's Recommended Decision and Order insofar as it implied that bargaining on impact might be only a permissive subject of bargaining under Section 11(b) of the EO. A/S noted that it is well settled that the obligation to meet and confer on the impact of a Decision by Agency management is mandatory under Section 11(a) of the EO. (Army, Yakima Firing Center, Ft. Lewis, Wash., A/SLMR No. 1103)

A/S, in agreement with ALJ, found that Respondent violated Section 19(a)(1) and (6) of the EO by its refusal to meet and confer on the impact on adversely affected employees of its decision to assign six military augmentess to the Respondent's Fire Station. (Army, Yakima Firing Center, Ft. Lewis, Wash. A/SLMR No. 1103)

A/S, contrary to the ALJ, found that the new basis for selecting cases for performance evaluation effected a change in employee terms and conditions of employment. Thus, prior to the change, a cross-section of an Appeals Officer's work product formed the basis for evaluation, but subsequent to the change a skewed sample of their work product was reviewed. In the A/S's view, this change constituted a change in the base from which performance evaluations were to be made and, therefore, was a change in employee terms and conditions of employment giving rise to the obligation of the Respondent to meet and confer, upon request, with the exclusive representative concerning the impact and implementation of the change. (IRS, S.W. Region, Dallas, Tex., A/SLMR No. 1106)

A/S adopted ALJ's finding that Cincinnati Dist. Off. violated Section 19(a)(1) and (6) of the EO by not timely notifying the Complainant of the decision to make a change in the level of review of advisory arbitration recommendations and by not meeting with it to negotiate on the impact and implementation of the change before it became effective. Although the Dist. Off. committed the unfair labor practice, the remedial order was directed, in part, against the IRS as it was the parent organization ultimately responsible for the bargaining of its subordinate activity and found to be held accountable for the actions of its agents and subsidiaries. (IRS, Cincinnati Dist. Off., A/SLMR No. 1107)

A/S, in adopting ALJ's recommended decision and order, noted that as there was no change in past practice with respect to the assignment of chemists only to process certain samples, there was no obligation to bargain on the impact and implementation of the change (EPA, Robert S. Kerr Environmental Research Laboratory, Ada, Okla., A/SLMR No. 1114)

A/S adopted ALJ's finding that the Respondent had violated Section 19(a)(1) and (6) of the EO when the Respondent changed a policy on overtime for unit employees and did so without giving the Complainant reasonable notification prior to the change and without giving it ample opportunity to meet and confer with respect to the procedures and impact of the change. ALJ found that the subsequent conduct of the parties in negotiating a new agreement containing provisions covering overtime compensation did not render the violation herein moot or de minimus. (SSA, HQ, Bureaus and Off's, Baltimore, Md., A/SLMR No. 1116)

In adopting the ALJ's conclusion that the complaint based on the Activity's unilateral termination of Van transportation, should be dismissed based on 19(d), as the same issues were raised under the parties' negotiated grievance procedure. A/S found it unnecessary to pass on the ALJ's further conclusions regarding the merits of the ULP and the viability of the grievance. (Dept. of Interior, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Ariz., A/SLMR No. 1126)

A/S found that Respondent violated Section 19(a)(1) and (6) of the EO by its failure to notify the AFGE and afford it the opportunity to bargain concerning the impact and implementation of its decision to suspend promotions of employees classified as Analysts. (SSA, BHA, A/SLMR No. 1134)

A/S, in agreement with ALJ, concluded that Section 19(a) (1) and (6) complaint should be dismissed as Complainant had failed to make timely request to negotiate on impact or implementation of Respondent's decision to change area of consideration for promotions. (Dept. of the Army, U. S. Military Academy, West Point, N.Y., A/SLMR No. 1138)

Respondent violated Section 19 (a)(6) of EO by failing to notify Complainant of its decision to convert temporary positions into permanent ones and thereby affording it an opportunity to request bargaining on impact and implementation. A/S noted that a request to bargain on impact and implementation is not necessary to establish a violation of the Order where, as in this case, management unilaterally made changes in personnel policies, practices or matters affecting working conditions without prior notice to the exclusive representative. (IRS, Austin Service Center, Austin, Tex., A/SLMR No. 1142)

A/S adopted the ALJ's conclusion that the Respondent violated the Order by failing to negotiate over the implementation and impact of a temporary word processing study where there was no showing of an emergency demanding the study's immediate implementation, and that the conversations concerning the study prior to its implementation could not be construed as a substitute for impact and implementation bargaining. (IRS, Southwest Region, Dallas, Tex., A/SLMR No. 1144)

Noting particularly the absence of exceptions, the A/S adopted the findings conclusions and recommendation of the ALJ to dismiss the complaint, in that the Respondent did not violate Section 19 (a)(1) and (6) of the Order. Thus, the A/S concluded that in the absence of an appropriate and timely request to bargain by the Complainant, dismissal of the complaint was warranted. (Supervisor of Shipbuilding Conversion and Repair, U.S. Navy, Groton, Conn., A/SLMR No. 1147)

A/S adopted ALJ's finding that Respondent violated Section 19(a)(1) and (6) of the Order by refusing to permit a representative of the Complainant's choice to attend a meeting concerning a formal discussion between management and employees concerning personnel policies and practices within the meaning of Section 10(e) of the Order. A/S further found that the Respondent had failed to comply with its obligation to negotiate and bargain in good faith with the Complainant concerning the procedures that were utilized in effectuating its decision to transfer cases from one office component to another and about the impact of the decision on adversely affected employees. (SSA, BRSI, Northeastern Program Service Center, A/SLMR No. 1150)

A/S adopted the ALJ's conclusion that there was no violation of 19 (a)(1) and (6) of the EO where rotation of technical assistants to different modules caused no real change in the working conditions, duties, or responsibilities of the affected employees, and resulted in no substantial impact upon the affected employees. (SSA, BRSI, Northeastern Program Service Center, A/SLMR No. 1158)

A/S adopted ALJ finding that Respondent violated Section 19(a)(1) and (6) of EO by failing to fulfill its obligation to afford the Complainant notice and an opportunity to meet and confer on the procedures to be utilized in effectuating its decision to assign a task force of claims authorizers to clear up a backlog of screening work in a unit other than their own, and on the impact of its decision on adversely affected employees as establishment of a task force for this purpose constituted a change in the Respondent's past practice affecting the working conditions of unit employees. (BRSI, Northeastern Program Service Center, A/SLMR No. 1158)

35 28 12 Failure to Meet and Confer on Impact or Procedures (Cont'd)

A/S adopted the ALJ's findings that Respondent had violated Section 19(a)(1) and (6) of the EO when it changed the workday, workweek and frequency of shift rotation without first bargaining in good faith on these Section 11(a) matters. A/S also found that while the decision to adopt a team concept was a reserved management right within the meaning of Section 11 (b) of the EO, Respondent violated 19 (a)(1) and (6) by implementing the new procedure without first affording the exclusive representative an opportunity to bargain over impact and implementation. (U.S. Customs Service, Region VI, Houston, Tex., A/SLMR No. 1161)

A/S adopted ALJ's finding that Respondent did not violate Section 19 (a)(6) of the Order by unilaterally implementing new parking rules related to certain parking spaces without bargaining with respect to the impact and implementation of the change. A/S found that Respondent did, in fact, notify the Complainant that it intended to change parking rules and that it sought and received the Complainant's comments and proposals on the change, and that such action constituted bargaining on the impact and implementation of the change. (HEW, SSA, BRSI, Northeastern Program Service Center, A/SLMR No. 1170)

A/S found in agreement with the ALJ that the Respondent violated Section 19 (a)(1) and (6) of the Order by its failure to bargain with Complainant concerning the impact and implementation over the decision to change the method of recording time spent on Civil Actions Branch cases. (SSA, Bureau of Hearings and Appeals, A/SLMR No. 1176)

35 28 16 Refusal to Allow Formal Discussion Representation

A/S, in agreement with ALJ, found that Respondent had not violated Section 19 (a)(1) and (6) of the EO by refusing to permit a union attorney to attend a Step 2 grievance meeting held under the parties' negotiated agreement to discuss an employee grievance, inasmuch as, Complainant knowingly and intentionally waived its right to designate, as its Section 10(e) representative, individuals other than those specifically enumerated in the negotiated grievance procedure. (IRS, Nat'l Off., Off. of Int'l Operations, A/SLMR No. 1079)

A/S, in essential agreement with the ALJ, dismissed the complaint alleging violation of Section 19(a)(1) and (6) of the EO with respect to Respondent's conducting of three meetings with unit employees without providing the Complainants an opportunity to be represented as required by Section 10(e) of the EO. A/S agrees that two of the meetings were called solely for an instructional purpose and were not Section 10(e) formal discussions as they were called solely for an instructional purpose. A/S found that questions from employees which arguably related to personnel policies and practices and matters affecting working conditions did not transform the meetings into formal discussions where the Respondent did not raise such issues, and that no bypass occurred where the Respondent indicated that it could give no direct or conclusive response to such questions. As to the third meeting, A/S found, contrary to ALJ, that it was a Section 10(e) formal discussion where the Respondent raised issues involving personnel policies and practices and matters affecting working conditions, but concludes that the Complainants were not deprived of their Section 10(e) right to be represented as they had actual notice of the meeting and were in fact represented therein, thus suffering no detriment as a result of their lack of formal notice. (IRS, Chicago Dist., Chicago, Ill., A/SLMR No. 1120)

A/S adopted ALJ's finding that Respondent violated Section 19 (a)(1) of the Order by refusing to permit a representative of the Complainant's choice to attend a meeting concerning a formal discussion between management and employees concerning personnel policies and practices within the meaning of Section 10(e) of the Order. (SSA, BRSI, Northeastern Program Service Center, A/SLMR No. 1150)

A/S, in agreement with ALJ, found meeting to be a formal discussion within the meaning of Section 10(e) of the Order as meeting was called for the sole purpose of terminating a probationary employee who lacks statutory appeal rights from agency action. Thus, the A/S found that the failure of the Respondent to give prior notification to the Complainant of the specific purpose of the meeting denied the Complainant the opportunity to participate in the meeting and was a violation of Section 19(a)(6) of the Order. (HEW, Region IX, San Francisco, Calif., A/SLMR No. 1156)

35 28 16 Refusal to Allow Formal Discussion Representation (Cont'd)

Contrary to ALJ, A/S found that Respondent's interview of a unit employee who was a potential witness in an upcoming arbitration hearing constituted a formal discussion within the meaning of Section 10(e) of the EO, and Respondent's failure to afford Complainant an opportunity to be represented violated Section 19(a) (1) and (6) of EO. (IRS, South Carolina District, A/SLMR No. 1172)

35 28 20 Uncompromising Attitude

No Entries

35 28 24 Dilatory and Evasive Tactics

A/S agreed with ALJ that Activity Area Coordinator was obligated to sign promptly an agreement reached by his authorized negotiating team which included the Superintendent. He noted that, under the circumstances, the Activity Area Coordinator's signature was required merely as a ministerial formality once the terms had been agreed upon by his authorized negotiators, in view of his admission that rejection was not becasue of any violation of law, regulations or the EO. (Dept. of the Navy, Antilles Consolidated School System, Fort Buchanan, San Juan, P.R., A/SLMR No. 1173)

35 28 28 Unilateral Changes in Terms and Conditions of Employment

A/S, in agreement with ALJ, found a violation of Section 19 (a)(1) and (6) of the EO where the Respondent unilaterally implemented a new telephone policy concerning incoming calls to union officials, without affording the AFGE an opportunity to meet and confer on the implementation and impact of such policy. (SSA, Bureau of Data Processing, Albuquerque Data Operations Center, Albuquerque, N.M., A/SLMR No. 1080)

A/S adopted ALJ's finding that Respondent did not violate Section 19 (a)(1) and (6) of the EO by refusing to process an employee's grievance under the negotiated grievance procedure where Respondent asserted that the matter was neither grievable nor arbitrable. ALJ noted that absent evidence of bad faith, such conduct does not constitute an unfair labor practice, as Complainant may seek a grievability or arbitrability determination pursuant to Section 13(d) of the EO. (Pennsylvania Army and Air NG, A/SLMR No. 1087)

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A/S, contrary to ALJ, found that Respondent did not violate Section 19 (a)(1) and (6) of the EO by announcing certain restrictions and limitations on the use of the official time by IAM officers and officials. A/S found that as the record was insufficient to establish that Respondent's conduct constituted unilateral changes from past practices, and as it was arguable that the Respondent's announcements concerning official time constituted reasonable interpretations of the parties' negotiated agreement, such announcements did not, standing alone, constitute violations of Section 19(a)(1) and (6) of the EO. (Dept. of Navy, Alameda, Calif., A/SLMR No. 1089)

While determining that the Council's decision in FLRC Nos. 77A-40 and 77A-92 did not warrant a result contrary to that reached in A/SLMR No. 998, A/S modified his holding in that case consistent with the Council's rationale, thus finding that the Respondent violated Section 19(a)(1) and (6) by unilaterally terminating certain provisions of an expired negotiated agreement which were mandatory subjects subjects of bargaining under Section 11(a), without giving complainants an opportunity to invoke the services of the Federal Service Impasses Panel. (IRS, A/SLMR No. 1091)

A/S, in agreement with ALJ, found that Respondent had violated Section 19 (a)(1) and (6) of the EO by failing to give Complainant an opportunity to consult, confer, or negotiate before changing the policy and practice of furnishing the Complainant, upon request, copies of certain documents. (Naval Weapons Station, Concord, Calif. A/SLMR No. 1093)

A/S noted, in adopting ALJ's recommended dismissal of Section 19(a)(1) and (6) allegations, that as there was no change in past practice with respect to the assignment of chemists only to process certain samples, there was no obligation to bargain on the impact and implementation of the change. (EPA, Robert S. Kerr Environmental Research Laboratory, Ada, Okla., A/SLMR No. 1114)

Alleged violation of Section 19 (a)(1) and (6) of the EO based on failure to negotiate prior to changing official time policy dismissed where A/S found the matter involved differing and arguable interpretations of official time provision of the parties' negotiated agreement rather than clear, unilateral breach thereof. (Naval Weapons Station, Concord, Calif., A/SLMR No. 1115)

Respondent violated Section 19(a)(1) and (6) of the EO when it unilaterally issued a regulation which instituted a change in policy with respect to the manner of attire for civilian technicians. (Louisiana Army N.G., New Orleans, La., A/SLMR No. 1117)

A/S adopted ALJ's finding that Respondent did not violate Section 19(a)(1) and (6) of the EO by changing the past practice in regard to the solicitation of written complaints and the opportunity to respond to those complaints. The ALJ found that there had been no clear policy in regard to the solicitation of written complaints or the opportunity to respond and that there was no evidence of an intent on the part of the Respondent to establish a change from a past practice. (Customs Service, Region 4, Miami, Fla., A/SLMR No. 1118)

A/S found, in agreement with the ALJ that the Respondent did not violate Section 19(a)(1) and (6) of the EO as it satisfied its obligation to negotiate with the NFFE to the extent required in implementing a change in office food and drink policy and effecting a rotation of employee work assignments. (SSA, Cincinnati Downtown Dist. Off., A/SLMR No. 1124)

In adopting the ALJ's conclusion that the complaint based on the Activity's unilateral termination of Van transportation, should be dismissed based on 19(d), as the same issues were raised under the parties' negotiated grievance procedure. A/S found it unnecessary to pass on the ALJ's further conclusions regarding the merits of the ULP and the viability of the grievance. (Dept. of Interior, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Ariz., A/SLMR No. 1126)

Respondent's use of supervisory monitoring of Appeals Officer's conferences was an established practice rather than a new working condition, and thus the Respondent did not violate Section 19 (a)(1) and (6) of the EO by refusing to negotiate on the matter. (North-Atlantic Region, IRS, A/SLMR No. 1129)

A/S adopted the ALJ's finding that the Respondent violated Section 19 (a)(1) and (6) of the EO by unilaterally terminating the past practice of allowing the NTEU to use Activity typewriters during non-duty time. The ALJ found that there had been a past practice and that the Activity had knowledge of that practice. (IRS, Southwest Region, Appellate Branch Office, New Orleans, La., A/SLMR No. 1153)

A/S adopted the ALJ's findings that Respondent had violated Section 19 (a)(1) and (6) of the EO when it changed the workday, workweek and frequency of shift rotation without first bargaining in good faith on these Section 11 (a) matters. A/S also found that while the decision to adopt a team concept was a reserved management right within the meaning of Section 11(b) of the EO, Respondent violated 19 (a)(1) and (6) implementing the new procedure without first affording the exclusive representative an opportunity to bargain over impact and implementation. (U.S. Customs Service, Region VI, Houston, Tex., A/SLMR No. 1161)

A/S found contrary to the ALJ that the Respondent did not violate Section 19 (a)(1) and (6) of the EO by prohibiting a shop steward and an employee from conferring in a particular building where Respondent's interpretation and application of the negotiated agreement in refusing to permit the shop steward and the employee to meet in the building involved did not constitute a clear and patent breach of the parties' agreement but rather was based on an arguable interpretation of the parties agreement. (Long Beach Naval Shipyard, Long Beach, Calif., A/SLMR No. 1159)

A/S adopted ALJ's finding that Section 19(a)(6) allegation that previously agreed upon terms of a negotiated agreement were eliminated in reproducing the printed version of the parties' negotiated agreement should be dismissed, where evidence disclosed negotiation with respect to the disputed terms and agreement by the Complainant's chief negotiator to eliminate such terms. (Office of the Secretary, HEW, A/SLMR No. 1165)

35 28 28 Unilateral Changes in Terms and Conditions of Employment (Cont'd)

Allegation that Activity violated Section 19 (a)(6) of the EO by filling new positions contrary to terms of negotiated agreement dismissed where new positions were found not to have accreted into existing unit, thereby rendering the question as to whether or not provisions of negotiated agreement were applicable to positions outside unit, to be one of contract interpretation rather than a clear and patent breach of the agreement (HEW, Office of the Secretary, A/SLMR No. 1168)

A/S found that Respondent violated Section 19 (a)(1) and (6) of the EO when it unilaterally changed an existing policy and past practice whereby policemen in the unit received advance notice of their assignments. Contrary to the ALJ the A/S found that the Respondent's conduct was more than a de minimus or technical violation of the Order, distinguishing Vandenberg Air Force Base, 4392nd Aerospace Support Group, Vandenberg Air Force Base, California, FLRC No. 77A-77 (1975). (Naval Administrative Command, Naval Training Center, Great Lakes, Ill., A/SLMR No. 1175)

Allegation that Respondent unilaterally implemented three new policy directives under an existing labor agreement while negotiations on a new agreement were continuing with certain issues pending before the FSIP, dismissed due to a lack of evidence in one instance that there had been a change in policy and in the two other instances that notices of proposed changes were given but no request for bargaining had been received prior to the implementation of the changes. (SSA, Bureau of Retirement and Survivors Insurance, A/SLMR No. 1177)

A/S, noting particularly the absence of exceptions, adopted the conclusion of the ALJ, that the Respondent did not violate Section 19 (a) (1) and (6) of the EO where the management official involved did not possess the authority to bind the Respondent. (FAA, N.Y. Air Route Traffic Control Center, A/SLMR No. 1178)

35 28 32 Bypassing Exclusive Representative

A/S adopted ALJ's conclusions that Respondent's conduct was violative of Section 19(a)(1) and (6) of the EO. ALJ found remarks of facility Commander concerning the cancellation of 4 job announcements because of Complainant's bargaining position interfered with employee's rights to be represented. He found also, and A/S agree, that publication of the results of negotiations in such a manner as to indicate that the outcome of such negotiations were

inimical to employee interests, or that employees would receive more favorable treatment if their exclusive representative refrained from dealing with Respondent, was improper. (Pennsylvania Army and Air NG., A/SLMR No. 1085)

A/S found a violation of Section 19(a)(1) and (6) of the EO where Respondent failed to notify and furnish an opportunity to the exclusive representative to be present at a meeting in which a management proposal impacting on employee terms and conditions of employment was discussed with employees. (Bureau of Alcohol, Tobacco, and Firearms, Midwest Region, Chicago, Ill., A/SLMR No. 1112)

A/S, in essential agreement with the ALJ, dismissed the complaint alleging violation of Section 19(a)(1) and (6) of the EO with respect to Respondent's conducting of three meetings with unit employees without providing the Complainants an opportunity to be represented as required by Section 10(e) of the EO. A/S agrees that two of the meetings were called solely for an instructional purpose and were not Section 10(e) formal discussions. A/S found that questions from employees which arguably related to personnel policies and practices and matters affecting working conditions did not transform the meetings into formal discussions where the Respondent did not raise such issues, and that no bypass occurred where the Respondent indicated that it could give no direct or conclusive response to such questions. As to the third meeting, A/S found, contrary to ALJ, that it was a Section 10(e) formal discussion where the Respondent raised issues involving personnel policies and practices and matters affecting working conditions, but concluded that the Complainants were not deprived of Section 10(e) right to be represented as they had actual notice of the meeting and were in fact represented therein, thus suffering no detriment as a result of their lack of formal notice. (IRS, Chicago Dist., Chicago, Ill., A/SLMR No. 1120)

A/S, in agreement with ALJ, dismissed the 19(a)(1) and (6) complaint finding that the remark alleged to have been made by supervisor to a unit employee grieving her failure to receive a promotion, if made, was made in the context of resolving grievances at an early stage and was not disparaging to the Complainants. (IRS and Brookhaven Service Center, A/SLMR No. 1125)

35 28 32 Bypassing Exclusive Representative (Cont'd)

A/S found that Respondent's conducting of word processing survey among certain bargaining unit employees without first "consulting or conferring" with the Complainant did not violate Section 19(a)(1) and (6) of the EO. A/S noted that the FLRC has held that information-gathering devices are permissible under certain circumstances and that in any communication between management and bargaining unit employees a determination must be made as to whether the communication constitutes an attempt to bypass the exclusive representative and deal directly with unit employees. A/S concluded that the subject survey was a permissible information-gathering device and did not reflect an intention on the part of the Respondent to bypass the Complainant and avoid its bargaining responsibility if, and when, it decided to change working conditions pursuant to the results of the survey. (NASA, Lewis Research Center, Cleveland, Ohio, A/SLMR No. 1179)

35 28 36 Refusal to Furnish Information

A/S adopted ALJ's finding that the Respondent violated Section 19(a)(1) and (6) of the EO by refusing to provide the Complainant with the necessary and relevant information requested in connection with the processing of a grievance on a promotion action. A/S noted that the FLRC has indicated that there are no statutory or regulatory prohibitions precluding disclosure of the requested material and that the Respondent's belated decision to provide additional information did not serve to cure the violation. (HEW, Region 8, Regional Off., A/SLMR No. 1109)

A/S found a violation of Section 19(a)(1) and (6) of the EO when the Respondent refused to allow the Complainant to examine the Respondent's investigatory file which formed the basis for its decision to terminate a probationary employee. A/S reasoned that the file was relevant and necessary information to the performance of Respondent's representative function. (IRS, Fresno Service Center, A/SLMR No. 1119)

35 28 36 Refusal to Furnish Information (Cont'd)

A/S found that the requested evaluation materials were necessary and relevant to the Complainants in performing their representational functions and would not constitute an unwarranted invasion of an employee's privacy. (IRS, Milwaukee Dist., A/SLMR No. 1133)

A/S found that IRS Milwaukee Dist. did not violate the EO in performing the ministerial act of deleting information from performance appraisals as it was implementing the directions from higher agency authority but that the IRS Nat'l Off. violated Section 19(a)(1) and (6) of the EO by prohibiting disclosure of the information which was contained in performance appraisals used in connection with a promotion action. (IRS, Milwaukee Dist., A/SLMR No. 1133)

A/S in agreement with ALJ concluded, in effect, that the Respondent Agency violated Section 19(a)(1) and (6) of the Order by improperly withholding from the Complainant material and information available to it during the formulation and preparation of notices of proposed suspension and/or discipline which were issued to employees who had designated the Complainant as their representative. However, the A/S further concluded in agreement with ALJ that the Respondent properly withheld a transcript of a Grand Jury proceeding which had been released to it for certain limited purposes by a U.S. District Court Judge. (Customs Service and Houston Region, A/SLMR No. 1135)

A/S adopted ALJ's dismissal of Section 19(a)(1) and (6) allegation that Respondent failed to furnish certain information regarding geographical areas of consideration. A/S found, in agreement with ALJ, that Complainant already had the requested material, but found it unnecessary to pass upon the ALJ's findings related to the scope and mootness of the complaint. (Pennsylvania Army and Air NG, A/SLMR No. 1155)

35 28 40 Failure to Meet Obligation Under National Consultation Rights

A/S adopted ALJ's recommended dismissal of the complaint noting that as the evidence established that the Respondent was not an agency or primary national subdivision nor was it acting as an agent for an agency or primary national subdivision, when it carried out the reorganization involved there was no obligation on its part to consult with the union holding national consultation rights imposed by Section 19(b) of the EO with the agency. (United States Air Force, A/SLMR No. 1152)

A/S dismissed complaint noting that several days prior to filing of the pre-complaint charge, the Complainant had filed and actively pursued a contractual grievance which raised the same issue. (FAA, A/SLMR No. 1073)

In adopting the ALJ's conclusion that the complaint, alleging a violation of 19(a)(1) and (6) of the EO based on the Activity's unilateral termination of the practice of transporting employees by government-owned vehicles between their home and their place of work should be dismissed based on Section 19(d) of the EO, as the same issues were raised under the parties' negotiated grievance procedures. A/S found it unnecessary to pass on the ALJ's further conclusions regarding the merits of the ULP and the viability of the grievance. (Dept. of Interior, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Ariz. A/SLMR No. 1126)

40 00 00 UNFAIR LABOR PRACTICES: LABOR ORGANIZATION

40 40 00 General

No Entries

40 08 00 Section 19(b)(1)

No Entries

40 12 00 Section 19(b)(2)

No Entries

40 16 00 Section 19(b)(3)

No Entries

40 20 00 Section 19(b)(4)

No Entries

40 24 00 Section 19(b)(4)

No Entries

40 28 00 Section 19(b)(6)

No Entries

40 32 00 Section 19(c)

No Entries

45 00 00 REMEDIAL ORDERS AGAINST AGENCIES: UNFAIR LABOR PRACTICES

45 04 00 Notification and Dissemination of Remedies

A/S affirmed ALJ's recommendation that the remedial notice be posted at all facilities and installations of the Southwest Region, over the Respondent's objection that the conduct which led to the ULP complaint occured only within the New Orleans Appellate Branch Office, as the unit of exclusive recognition included all of the employees of the Region and the Regional Office took an active role in rejecting the Complainant's bargaining request in this matter. (IRS, Southwest Region, Dallas, Tex., A/SLMR No. 1144)

45 08 00 Advice of Compliance

No Entries

45 10 00 Modification to Orders

No Entries

45 12 00 Remedies for Improper Rules, Regulations and Orders

No Entries

45 16 00 Remedies for Improper Conduct

No Entries

45 16 04 Interference, Solicitation or Distribution of Literature

Activity ordered not to (1)indicate to employees that job announcements were cancelled and will not be re-announced because of the bargaining position taken by union,(2) interfere, restrain, or coerce employees,(3) deal directly with unit employees by publishing the results of negotiations in such a manner as to indicate that the outcome of such negotiations are inimical to employee interests, or that employees would receive more favorable treatment if their union refrains from dealing with the Activity. (Pennsylvania Army and Air NG, A/SLMR No. 1085)

Activity ordered to cease and desist from threatening its employees by threatening adverse personnel action if they consult their exclusive representative or file a contractual grievance. (Dept. of the Army, Fort Polk, La., A/SLMR No. 1100)

45 16 04 Interference, Solicitation or Distribution of Literature (Cont'd)

Respondent ordered to cease and desist from (1) breaching the terms of the parties' negotiated grievance procedure by refusing to render a decision at a prescribed step in the negotiated grievance procedure set forth in the negotiated agreement, and (2) interfering with, restraining, or coercing its employees. Respondent is further ordered to, upon request, proceed to Step 2 and succeeding steps, if necessary, of the negotiated grievance procedure concerning the grievance which sought to change one or more factor ratings on an employee performance rating. (GSA, Region 5, Chicago, Ill., A/SLMR No. 1139)

Respondent ordered to cease and desist from interrogating its employees concerning their membership in, or activities on behalf of, the Complainant. (NLRB and its General Counsel and NLRB, Region 29, A/SLMR No. 1143)

45 16 08 Discrimination

Respondent ordered to cease and desist from transferring, assigning, disciplining, or discriminating in any manner against employees in regard to hiring, tenure, promotion or other conditions of employment in order to discourage membership in labor organization. (Customs Service, Region 4, Miami, Fla., A/SLMR No. 1118)

A/S denied request for reinstatement of probationary employee pending review of employee's separation, finding insufficient evidence to establish that but for the violation of Section 19(a)(1) and (6) of the EO, the employee would not have been discharged. (IRS, Fresno Service Center, A/SLMR No. 1119)

45 16 12 Assisting a Labor Organization

No Entries

45 16 16 Refusal to Accord Appropriate Recognition

No Entries

45 16 20 Failure to Consult, Confer or Negotiate

Activity ordered not to (1) indicate to employee that job announcements were cancelled and will not be re-announced because of the bargaining position taken by union, (2) interfere, restrain, or coerce employees, (3) deal directly with unit employees by publishing results of negotiations in such a manner as to indicate that the outcome of such negotiations are inimical to employee interests, or that

employees would receive more favorable treatment if their union refrains from dealing with the Activity. (Pa. Army and Air N.G., A/SLMR No. 1085)

A/S modified ALJ's recommended order to include an affirmative action which required Respondent to not only cease and desist from instituting a change in the policy and practice of furnishing the Complainant, upon request, copies of certain documents, but, in addition, required Respondent, upon request, to furnish copies of certain of those denied documents to the Complainant. (Naval Weapons Station, Concord, Calif., A/SLMR No. 1093)

Respondent ordered to cease and desist from instituting changes in the system by which Branch Chiefs sample work accomplished by Appeals Officers for the purpose of evaluating their work performance without negotiating impact and implementation. As the specific change about which the Respondent failed to bargain on impact and implementation was terminated after six months, Respondent was ordered to, upon request, reevaluate, using the present sampling system, any employee whose current annual evaluation is based, in whole or in part, on individual cases selected for review during that six-month period based on the sampling system about which the Respondent failed to negotiate as required. (IRS, S.W. Region, Dallas, Tex., A/SLMR No. 1106)

Respondent ordered to cease and desist from instituting any change in the method of processing advisory arbitration opinions without first notifying the Complainant and affording it the opportunity to meet and confer, to the extent consonant with law and regulations, concerning the impact and implementation of such change and rescind the decision to change the level of review of arbitrator's advisory opinion in the subject case reviewed by the appropriate level, the Regional Commissioner. (IRS, Cincinnati Dist. Off., A/SLMR No. 1107)

A/S ordered Respondent to cease and desist from refusing to permit Complainant access to such documents and materials as are necessary and relevant to Complainant's processing of a grievance regarding the selection process. (HEW, Region 8 Regional Off., A/SLMR No. 1109)

Respondent ordered to cease and desist from conducting formal discussions between management and employees concerning personnel policies and practices, or other matters affecting general working conditions of employees without notifying

and affording the exclusive recognized representative the opportunity to be represented at such discussions by its own chosen representative. (Bureau of Alcohol, Tobacco, and Firearms, Midwest Region, Chicago, Ill., A/SLMR No. 1112)

A/S ordered Respondent to cease and desist from unilaterally instituting a new policy for the overtime compensation of employees represented exclusively by the Complainant or any other exclusive representative, without first affording such representative an opportunity to meet and confer, to the extent consonant with law and regulations, concerning the impact and implementation of such policy and, upon request, to meet and confer concerning the procedures to be utilized in effectuating decisions on overtime. (SSA, HQ, Bureaus and Off's, Baltimore, Md., A/SLMR No. 1116)

Activity ordered to (1) cease and desist from instituting a change in policy with respect to the manner of wearing the utility uniform, and afford union representatives the opportunity to meet and confer, (2) interfere, restrain or coerce employees, (3) rescind provision concerning removal of certain shirts, (4) notify unions involved of any intended change in policy, and (5) post notice. (Louisiana Army NG, New Orleans, La., A/SLMR No. 1117)

A/S ordered that Respondent permit Complainants access to materials that are necessary and relevant, after removing information of a sensitive or damaging personal nature, so that it could determine if there was an incipient grievance regarding a promotion action. (IRS, Milwaukee Dist., A/SLMR No. 1133)

Respondent ordered to cease and desist from changing job grade classifications and imposing promotion moratoriums affecting employees without first notifying and affording the exclusive representative the opportunity to meet and confer on the impact and implementation of such decisions. (SSA, BHA, A/SLMR No. 1134)

Respondent ordered to cease and desist from refusing to provide to the Complainant such documents and materials as are necessary and relevant to determine the manner in which to discharge its representational obligation to certain employees who had designated the Complainant to be their representative upon receipt of proposed notices of suggestion and/or discipline. (Customs Service and Houston Region, A/SLMR No. 1135)

Respondent ordered to meet and confer on procedure used to determine which employees were subject to a permanent reassignment and on the impact such reassignments had on adversely affected employees. Contrary to Complainant's request, however, A/S did not order a make whole rememdy for those employees adversely affected as there was no evidence to establish that any losses suffered by the employees would not have been incurred "but for" the Respondent's improper conduct. (IRS, Austin Service Center, Austin, Tex., A/SLMR No. 1142)

Respondent ordered to cease and desist from instituting a word processing study involving employees exclusively represented by the Complainant without first notifying the Complainant and affording such representative the opportunity to meet and confer, to the extent consonant with law and regulations, on the procedures which management will observe in effectuating such a study, and on the impact of such study on adversely affected employees. (IRS, Southwest Region, Dallas, Tex., A/SLMR No. 1144)

Respondent ordered to cease and desist from failing to afford the employees exclusive representative, the opportunity to be represented at formal discussions between management and employees or employee representatives concerning personnel policies and practices or other matters affecting general working conditions of employees in the unit. (HEW, Office of the Secretary, Office for Civil Rights, A/SLMR No. 1145)

Activity ordered to cease and desist from unilaterally altering or changing the established past practice of allowing NTEU to use IRS typewriters for union business relating to labor-management correspondence incident to its representational duties, and consonant with the appropriate authorities, without first bargaining in good faith with the exclusive representative. (IRS, Southwest Region, Appellate Branch Office, New Orleans, La., A/SLMR No. 1153)

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45 16 20 Failure to Consult, Confer or Negotiate (Cont'd)

Respondent ordered to cease and desist from conducting formal discussions concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit without giving the exclusive representative the opportunity to be represented at such discussions by its own chosen representative. (HEW, Region IX, San Francisco, Calif., A/SLMR No. 1156)

Respondent was ordered to cease and desist from assigning unit employees to a task force to perform screening work outside their permanent work unit without first notifying the Complainant and affording it the opportunity to meet and confer, to the extent consonant with law and regulations, on the procedures which management would observe in implementing such task force, and on the impact such task force would have on adversely affected employees in the exclusively recognized unit. (SSA, BRSI, Northeastern Program Service Center, A/SLMR No. 1158)

Respondent ordered to cease and desist from unilaterally changing terms and conditions of employment within the ambit of Section 11(a) of the EO and affirmatively to restore the status quo. Respondent also ordered to bargain over impact and implementation of changes in terms and conditions of employment within the ambit of Section 11(b). (U.S. Customs Service, Region VI, Houston, Texas, A/SLMR No. 1161)

Respondent ordered to cease and desist from conducting formal discussions without affording the employees' exclusive representative an opportunity to be represented at such discussions. (IRS, South Carolina District, A/SLMR No. 1172)

Respondent ordered to cease and desist from unilaterally changing the established past practice of giving the policeman in the unit advance notice of their assignments without first notifying the exclusive representative and upon request, bargaining with respect to such proposed change in policy. (Naval Administrative Command, Naval Training Center, Great Lakes, Ill., A/SLMR No. 1175)

45 20 00 Jurisdictional Questions

No Entries

50 00 00 Remedial Orders Against Labor Organizations: Unfair Labor Practices

No entries under any heading or subheading.

55 00 00 Standards of Conduct

No entries under any heading or subheading.

60 00 00 GRIEVABILITY AND ARBITRABILITY

60 04 00 General

No Entries

60 08 00 13(a)

No Entries

60 12 00 13(b)

No Entries

60 14 00 13(d)

No Entries

60 16 00 13(d)

A/S adopted ALJ's finding that Respondent did not violate Section 19(a)(1) and (6) of the EO by refusing to process an employee's grievance under the negotiated grievance procedure where Respondent asserted that the matter was neither grievable nor arbitrable. ALJ noted that absent evidence of bad faith, such conduct does not constitute an unfair labor practice, as Complainant may seek a grievability or arbitrability determination pursuant to Section 13(d) of the EO. (Pennsylvania Army and Air NG, A/SLMR No. 1087)

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FOR LABOR-MANAGEMENT RELATIONS

July 1, 1978 - December 31, 1978

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